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THE

CRIMINAL LAW

OF

THE BENGAL PRESIDENCY.

BY

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AD LECTOREM ET JUDICEM.

Sunt delicta tamen quibus ignobisse velitis:
Nam neque chorda sonum reddit quem bult manus et mens,
Poscenti que gravem persæpe remittit acutum;
Nec semper feriet quodcunque minabitur arcus.
Verum ubi plura nitent in scriptis ne tibi paucæ
Offendant maculæ, quas ant incuria fudit,
Ant humana parum cabit natura.

Valete.

Allahabad. G. E. K.
Kalendis Quinctilibus.
MDCCCLXXIII.

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ABBREVIATIONS.

THE following (among other) abbreviations will be found in this work:—

B. L. R.	... Bengal Law Reports.
C. O.	... Circular Order (where not specially mentioned, of Calcutta).
Cen. Prov.	... Central Provinces.
Commr.	... Commissioner.
Ct.	.. Court.
E. B. S.	... European British subject.
E. I. R.	... East Indian Railway.
G. G. in C.	... Governor-General in Council.
G. I., F. D.	... Government of India, Foreign Department.
G. I., H. D.	... Government of India, Home Department.
G. O.	... Government Order (where not specially mentioned, of Bengal).
H. C., Bom.	... High Court, Bombay.
H. Ct.	... High Court (where not specially mentioned, of Calcutta).
I. G., N. W. P.	... Inspector-General, North-West Provinces.
J. P.	... Justice of the Peace.
Jud. Commr.	... Judicial Commissioner.
Magte.	... Magistrate.
Magte. of Dist.	... Magistrate of District.
Magte. of Div. of Dist.	... Magistrate of Division of District.
Pol. C.	... Police Circular.
P. C.	... Penal Code.
Rail.	... Railway.
W. R.	... Sutherland's Weekly Reporter.
W. R., C. L.	... Sutherland's Weekly Criminal Letters.
24-1-69	... January 24th, 1869.

ADDENDA ET CORRIGENDA.

Page 33, line 6, *for* "attrocious," *read* "atrocious."

Page 39, line 2, *for* "award at once, to," *read* "award, at once to."

Page 92, line 14. This Circular has been superseded by the following, No. 9 of 1873, just issued, which enacts as follows:—

It is the wish of Government neither to fetter the discretion which is given to the Police by the law, nor to lessen the responsibility attaching thereto of deciding whether the immediate arrest of a guilty person is or is not necessary for the ends of justice. Moreover, as this depends as much on the circumstances and gravity of the individual case, and the position of the guilty party, as on the class of the offence committed, it is impossible to lay down any strict rule of universal applicability. An offence, for instance, which would not justify the arrest of a person of substance and position, because there might be no chance of an attempt on his part at absconding, might be quite sufficient ground for the immediate apprehension of a homeless vagrant. So also with cases of bodily injury, if slight, arrest would be improper; if severe and serious, it might be imperative.

The Lieutenant-Governor therefore considers it best to leave to Police officers the working of the law as it stands, and to trust to the exercise of their judgment; but His Honor looks to Magistrates and District Superintendents to explain to the subordinate Police, as opportunity offers, the nature of the responsibility attaching to the power given them by law, and the necessity for exercising it with care, discretion, and tact. Their attention should be directed to the considerations which ought to guide them in determining whether immediate arrest is necessary, such as the probability of the accused attempting to escape, the fact of the offence being neither of so heinous a class (such as murder), nor attended by such special circumstances, as to make it advisable to deal with it exceptionally. When a crime is not likely to be repeated, nor to lead to any other offence, the mere fact of the suspected party being allowed to remain at large until the Magistrate's orders are taken is not likely to defeat the ends of justice.

Page 125, lines 25—34 are cancelled for North-Western Provinces by C. O. 92A of 1873, which prescribes that all serious accidents, which the Railway Company are bound to report, shall be reported to the Secretary to Government, in the Judicial Department, through the Magistrate of the District in which the accident occurred, as soon as possible after its occurrence.

Page 142, line 6, *for* "prisioner," *read* "prisoner."

Page 146, lines 33—38. These lines should be cancelled.

Page 154, line 26, *for* "s. 177," *read* "s. 214."

Page 177, line 23, *for* "evidences," *read* "evidence."

Page 187, line 3, *for* "the," *read* "this."

Page 197, line 42, add:—"See *per contra*, s. 418."

Page 206, line 25, &c. Later orders will be found at pp. 1140, &c.

Page 253, line 2, *for* "dischaged," *read* "discharged."

Page 264, line 47, add:—"the fine will obtain from the Honorary Assistant Commissioner a memorandum in the form prescribed, and forward it with the amount realized to the Tahsil, or in case of necessity direct to the Sadr."

Page 313, line 16, *for* "Maigstrate," *read* "Magistrate."

Page 334, line 23. The Bengal Government have just (30th May 1873) issued rules and rates similar to those obtaining in the North-Western Provinces, save that for class III, in lieu of "Europeans and others not being Native," they read "Europeans and Natives of superior rank."

The following additions are also made:—

3. No payment shall be made by Government to witnesses summoned at the instance of the complainant under s. 361, unless the prosecution appear to the Court or Magistrate to be in furtherance of the interests of public justice, but under this section the Magistrate may require the complainants to pay their expenses.

(*f.*) In districts where no railway exists, and in parts of Eastern Bengal, where the only mode of travelling is by water, and in cases where persons travel by rapid dâk by road, the *actual* expenses up to a maximum limit of Rs. 2 for boats per diem, and 4 annas a mile for travelling by road, may be paid, subject to the proviso that the travelling allowance is only to be given when the journey could not have been performed on foot, or in case of persons whose age, position, and habits of life render it impossible for them to walk.

Officers will be held responsible that parties of witnesses are brought to Court together, as far as possible, so as to save expense. Each person should not be allowed to charge for his own boat; and if a passage is offered him with others, he will have no claim for travelling allowance.

Page 374, line 46, *for* "applictaion," *read* "application."

Page 383, line 16, *for* "assemlby," *read* "assembly."

Page 459, s. 161, "Government" includes Railway Company.

Page 460, s. 161, "Government" includes Railway Company.

Page 497, s. 228, "Judicial proceeding" includes any proceeding under Act VIII of 1871.

Page 700, line 52, add:—

xvi. Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police officer.

Page 701, line 34, add the following orders by Chief Court, Punjab:—

BOOK CIRCULAR No. XI—1517.

10th June 1873.

The annexed rules, having received the sanction of Government, are published in supersession of all previous rules.

5. The Court Fees' Act, s. 20, cl. 2, restricts the levy of a fee on criminal processes to non-cognizable cases. The Criminal Procedure Code (Act X of 1872) clearly contemplates that it is only in exceptional cases that a criminal process shall be issued through another person than a Police officer; and it is to these exceptional cases that the levy of a fee is restricted by Rule 4, which enacts also that the service in such cases shall be ordinarily made through the Nazir's establishment.

6. It is important that the discretion allowed to Magistrates of levying a fee on criminal processes should not run counter to the principles enunciated in the last paragraph, or be used so as to unduly burden those who have recourse to the Criminal Courts.

7. The Chief Court accordingly enumerate the cases to which the exercise of this discretion should be restricted:—

(*a.*)—Cases of the kind specified in s. 148, C. P. C. (summons cases), when the Magistrate is doubtful whether or no there is sufficient ground for summoning accused.

(*b.*)—Cases tried under Chapter XVI, C. P. C., where parties fail to produce their own witnesses, and the Magistrate issues summons upon application of either party according to s. 361, C. P. C.

(*c.*)—Cases (*i.e.*, inquiries and warrant cases) in which, under the circumstances specified under s. 359, C. P. C., the Magistrate calls upon the accused to defray the expense of obtaining the attendance of any particular witness.

(*d.*)—Cases in which, upon complaint made, a Magistrate exercises his preventive jurisdiction under Chapter XXXVII (security to keep the peace), Chapter XL (possession).

8. Under s. 31 of the Court Fees' Act, in cases of conviction of the accused of the offence of wrongful confinement, wrongful restraint, or of any non-cognizable offence, the Court must, by its order, direct that the accused pay to the complainant any sum that he may have expended in issue of processes; and such sum may be recovered in the manner provided for recovery of fines.

9. As a liberal maximum of peons has been provided for under the rules, and the number of criminal processes served in this way will be inconsiderable, the Chief Court do not think it necessary at present to make any special addition to the Nazir's establishment for the purpose of the serving of criminal processes.

10. Existing establishments and existing salaries will, in all cases, remain unchanged until after full report the sanction of the Chief Court has been given to any alterations.

11. Naib Nazirs are included in process-serving establishment.

4. No fee shall be chargeable for any process issued through the Police. In non-cognizable cases, when a process is issued through the Nazir's establishment, a uniform fee of four annas shall be levied.

15. No person who is not a registered peon shall be employed in the service or execution of any Civil or Criminal process without the special leave of the Court, and such leave shall only be given in cases of necessity, and the reasons for granting it shall be recorded.

16. Registered peons shall be supplied with a belt and badge showing in English and vernacular the Court to which they belong. The cost of these shall be defrayed from judicial contingencies.

20. On every process issued from any Court, there shall be recorded the name of the peon deputed to serve or execute the same, the period within which the peon is required to certify service or execution, the amount of fee paid, and the date of payment; and date of return after service or execution shall be subsequently endorsed. Such endorsements shall be signed by the Nazir, or Naib Nazir, or Bailiff.

21. An account of process-fee stamps filed, of processes issued (Civil and Criminal), of number of peons employed, of cost of establishment and of contingencies shall be kept for each Court where a separate establishment is entertained. The account of the Courts at the Sadr must be shown in two grades.

22. A quarterly statement will be submitted to Chief Court through the Commissioner, who will submit a return for his own Court, there being a separate column for Criminal and Civil processes.

Page 704, line 14, add G. O., Judl. Dept., No. 996, dated 6th June 1873.

The Governor-General in Council is pleased to remit the fees leviable on the undermentioned documents:—

1. Copy or translation of the charge furnished to an accused person under s. 199 of the C. P. C.

2. Copies of depositions furnished to accused persons under s. 201 of the said Code.

3. Copy of the judgment or order passed by a Criminal Court, and of a Judge's charge to the Jury, furnished under s. 276 of the said Code to any person affected by such judgment or order, provided that such person is in jail, or the Court, for some special reason, sees fit to grant such copy free of expense.

4. Copies of the examination of witnesses given to accused persons under s. 357 of the said Code.

5. Copies of charges given to accused persons under s. 446 of the said Code.

6. Copies of orders of maintenance given under s. 538 of the said Code.

Page 769, s. 19, *ad fin*, add "Commits an offence punishable under s. 23, P. C."

Page 965, line 37, *for* "Act III," *read* "Act XV."

Page 975, schedule of offences unavoidably absent, see ss. 66—76.

Page 977, *dele* the words "Indian Christian."

Page 1041, for Panjab Laws Act, see Act IV of 1872, ss. 39—50.

Page 1122, line 12:—

The following has been issued on May 6th, 1873, by the Bengal Government:—

Notification, dated Calcutta, the 6th May 1873.—In supersession of paras. 6 to 9, see p. 1122, orders following to have effect in all districts in which Honorary Magistrates may be appointed, and Benches constituted, with Government approval:—

Under direction of Magistrate of District, any two or more Honorary Magistrates in any district may, in that district, sit as a Bench in company with District or Subdivisional or any Magistrate (salaried) subordinate to District Magistrate exercising not less than second class powers, whom Magistrate of District may depute; any Bench so constituted is vested with first class powers in respect of offences cognizable by Magistrates of first class, and with powers of summary trial under s. 222 of C. P. C.

2. Under special order of District Magistrate, any two Magistrates, honorary or salaried, of whom one is vested with not less than second class powers, may form a Bench with first class powers, for trial of any particular case or class of cases, specially referred to them by District Magistrate, and may also exercise summary powers under s. 222, unless order of reference is for trial in regular form.

3. Under direction of District Magistrate, any one of the Honorary Magistrates of a district may sit with any salaried Subordinate Magistrate to form a Bench, and Bench so constituted shall exercise second class powers in respect of offences cognizable by Magistrates of that class, and powers of summary trial under s. 225 of C. P. C., unless any member of the Bench have first class powers, in which case Bench may also exercise those powers. If Magistrate of first class has summary powers under s. 222, Bench may exercise those powers.

4. Subject to general orders of District Magistrate, any two or more Honorary Magistrates may, in their respective towns or municipalities, sit together as a Bench for disposal of offences under Municipal or Towns Acts, and conservancy clauses of any Police Act, without assistance of any salaried Magistrate, and shall exercise third class powers and powers of summary trial under s. 225 in respect of all such cases.

Page 1168, line 34, add:—

I.—The registers for eunuchs prescribed in s. 24 of the Act shall be prepared and kept by the Deputy Commissioner in the Forms A and B.

II.—In obtaining the information required to complete the said registers, the services of Police officers not below the rank of Deputy Inspector may be employed.

III.—Register B shall contain only the names of those eunuchs whom the officer authorized by His Honor the Lieutenant-Governor has required to furnish information as to their property.—*June* 3, 1873, *No.* 2205.

Page 1202, add:—

S. 40.—Petition for leave to file a specification of an invention, or for the extension of the term of the exclusive privilege of making, using, or selling such invention in India. Rs. 100.

S. 41.—Articles of clerkship or contract whereby any person shall first become bound to serve as a clerk in order to his admission as an attorney in any High Court. Rs. 500.

Page 1231, col. 8, insert "any Magistrate."

N.B.—The Municipal Act on p. 996 *and Village Police Act on p.* 103 *are as yet only Bills.*

GAL SECRETARIA
LIBRARY

THE CODE OF CRIMINAL PROCEDURE.

ACT No. X OF 1872.

(RECEIVED THE ASSENT OF HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL ON 25TH APRIL 1872.)

An Act for regulating the Procedure of the Courts of Criminal Judicature.

Preamble.

WHEREAS it is expedient to consolidate and amend the law regulating the Procedure of the Courts of Criminal Judicature, other than the High Courts in Presidency towns in the exercise of their original criminal jurisdiction, and the Courts of Police Magistrates in such towns; It is hereby enacted as follows:—

This Code is modelled upon the English system, though with some adaptations and variations. Its principal steps are—(1) arrest by the police and inquiries incidental to arrest; (2) issue of summons or warrant by the Magistrate and inquiry subsidiary thereto; (3) procedure before the Magistrate, who may either try the accused himself, or commit him to the Sessions or High Court; (4) procedure before the Court of Session; (5) appeals, reference, and revision by the High Court.

The Code of Criminal Procedure contains many other provisions which are intended for the prevention or suppression of offences. Such are the law as to the abatement of nuisances, the taking of recognizances for keeping the peace, and securities for good behaviour, and the making of orders for the maintenance of wives and children—*G. I. H. D. Selections, No.* 89.

XIV/84

PREAMBLE.

The following notes made by Mr. Stephen explain fully the intent and scope of this Code, and the position which those who administer it should strive to maintain:—

"I need hardly remark that this Code is one of the most important enactments which can be brought before this Council. I am not sure that it may not be regarded as the most important, perhaps, with the exception of the Penal Code, as it is in reality little less than the body of law by which the practical every-day business of governing this vast empire is carried on by a body of men—I mean the district officers—of whom it is difficult to say whether the smallness of their number in comparison to the incredible magnitude of their duties, or their success in performing the immense task entrusted to them, is most remarkable. The Civil Service, or at all events, its most distinguished members, do not appear to bear any particular love to lawyers. I hope they will not be affronted if a lawyer takes the opportunity of his last public appearance in this country to express the profound respect with which they have impressed him. I have seen much of the most energetic sections of what is commonly regarded as the most energetic nation in the world; but I never saw anything to equal the general level of zeal, intelligence, public spirit, and vigour maintained by the public service of this country, and nothing could give me greater satisfaction than to be able to believe that I had in some degree lightened their labors and strengthened their hands by increasing the clearness, simplicity, and precision of the system of rules by which they are guided in the discharge of their duties.

"To return to the subject of Criminal Procedure, I think that the present Bill is not adequately described by the name which it bears, though I am not prepared to suggest a better; but its nature may be easily described. Of the benefits which England has conferred upon India, the first and the most important is the general maintenance of peace and order, and the suppression of crime. Peace and order are ideas so familiar to the inhabitants of Western Europe, that we are, I think, a little apt to forget that they do not come by nature, like the sun, the wind, and the rain, and that, till they have given birth to the sentiments and institutions which protect them, they are an artificial state of things which can be maintained in a country like this only by elaborate arrangements made beforehand, and by great personal exertion and resource. This Code contains those arrangements. It is the instrument by which the peace and order of the country are secured in detail, as the Army is the instrument by which the same object is obtained in gross, and it is obvious that no degree of care which may be required to keep such an instrument in thorough working order can be regarded as excessive."

PART I.

Notes by Select Committee on Chapter I.

Several additions have been made to the chapter of definitions. We have assigned a precise meaning to "Investigation," "Inquiry," "Trial," "Judicial Proceeding," "Province," "High Court," "European British Subject," "Sessions Case," "Magistrate's Case," "Summons Case" and "Warrant Case," "Cognizable," "Non-cognizable," &c. The effect of these definitions will be, we think, to render the provisions of the Code more distinct and intelligible.

CHAPTER I.—ss. 1—4.

Preliminary, Repeal, Local Extent and Definitions.

Short title.

1. This Act may be called "The Code of Criminal Procedure."

Local extent.

It extends to the whole of British India (*a*), but shall not, except as hereinafter provided, affect the procedure of the High Courts or Police Magistrates in Presidency towns;* * S. 4.

(*a*). The words "British India" shall denote the territories that are or shall become vested in Her Majesty by the Statute 21 & 22 Vic., c. 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca—S. 15, P. C.

Thus Pegu and British Burmah, though not geographically situate within British India, are brought under the rules of this Act.

Commencement.

And it shall come into force on the first day of September 1872.

Repeal of enactments.

2. The enactments, mentioned in the first schedule hereto annexed, are repealed to the extent specified in the third column of the said schedule.

Saving of special procedure.

Wherever a special form of procedure is prescribed by any law, not expressly repealed in the first schedule to this Act, it shall not be deemed to have been impliedly repealed by reason of its being inconsistent with the provisions of this Code (*a*).

(*a*). As, for instance, the procedure enacted by Act XVIII of 1862 for the criminal jurisdiction of the High Courts.

CH. I. SS. 2—4.

References to Code of Criminal Procedure.

In every Act, passed before this Act, in which reference is made to the Code of Criminal Procedure, such reference shall be taken to be made to this Act.

References in former Acts.

In every Act, passed before this Act, the expressions "officer exercising the powers of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall, respectively, be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class," as defined in this Act.*

Ss. 19, 20.

Certain specified references.

The references made in the enactments specified in column one of the fifth schedule hereto to the sections of the former Code of Criminal Procedure specified in column two of the said schedule, shall be deemed to be made to the sections of this Code directed in the third column of the said schedule to be substituted for the said section in column two.

Notifications published and orders made under any section of any Act hereby repealed, shall be deemed to have been published and made under the corresponding section of this Act (*b*).

(*b*). It need hardly be added that any such notifications and orders, if opposed to the spirit of this new Code, will cease to exist with the repealed section to which they are subordinate.

† S. 4.

Pending cases.

3. Cases pending in any Criminal Court† when this Act comes into force shall be decided as far as may be according to the procedure provided in this Act.

Definitions.

4. In this Act the following words and expressions have the following meanings unless a different intention appears from the context:—

"Special law."

"Special law" means a law applicable to a particular subject (*a*).

(*a*). As the Railway Act, Abkaree Act, and the like.

"Local law." "Local law" means a law applicable to a particular part of British India* (*b*).

* S. 1, n.

(*b*). As the Municipal laws of Allahabad, Meerut, &c.

"Investigation." "Investigation" includes all the proceedings† by the Police, authorized by this Act, for the collection of evidence.

† Ss. 109—138.

"Inquiry." "Inquiry" includes any inquiry which may be conducted by a Magistrate‡ or Court under this Act.

‡ S. 6, n.

"Inquired into." "Inquired into" means and includes every proceeding preliminary to trial.

"Trial." "Trial" means the proceedings taken in Court after a charge has been drawn up, and includes the punishment of the offender.

It includes the proceedings under Chapters XVI (*c*) and XVIII from the time when the accused appears in Court.

(*c*). Chapter XVI relates to trial of summons cases by Magistrates; Chap. XVIII to summary trials.

"Judicial Proceeding." "Judicial Proceeding" means any proceeding in the course of which evidence (*d*) is or may be taken, or in which any judgment, sentence, or final order is passed on recorded evidence.

(*d*). Evidence is thus defined in Act I of 1872:—

"Evidence." "Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence:

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

"Document." "Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

CH. I.
S. 4.

Illustrations.

A writing is a document.
Words printed, lithographed or photographed are documents.
A map or plan is a document.
An inscription on a metal plate or stone is a document.
A caricature is a document.

"Written."

"Written" includes "printed," "lithographed," "photographed," and "engraved."

"Criminal Court."

"Criminal Court" means and includes every Judge (*e*) or Magistrate, or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding.

(*e*). Judge, *i. e.*, not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which if not appealed against would be definitive, or a judgment which confirmed by some other authority would be definitive; or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

1. A Collector exercising jurisdiction in a suit under Act X of 1859 is a Judge.

2. A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine, or imprisonment, with or without appeal, is a Judge.

3. * * * * * *

4. A Magistrate, exceeding jurisdiction in respect of a charge on which he has power only to commit for trial, is not a Judge. (Act XLV of 1860, s. 19).

The only judicial criminal authorities whom this definition seems to omit all mention of, are Justices of the Peace not being Magistrates or Judges. Such persons, however, have no further power to hold inquiry or trial save where such power is expressly given to them by any special or local law.

"Province."

"Province" means the territories under the Government or Administration of any Local Government.

"Presidency town."

"Presidency town" means the local limits of the ordinary original civil jurisdiction of the High Courts of Calcutta, Madras or Bombay.

"High Court."

"High Court" means, in reference to proceedings against European* British subjects, or persons jointly charged with European British subjects, the High Courts

* S. 71.

of Calcutta, Madras, Bombay, the High Court for the North-Western Provinces, and the Chief Court of the Panjáb.

In other cases "High Court" means the highest Court of criminal appeal or revision (*f*) in any province.

(*f*) In the Panjáb, Oudh, and Central Provinces, the Chief Commissioner's Court is the highest Court of criminal appeal or revision.

"Session case."

"Session case" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by a Court of Session and all cases which Magistrates commit to a Court of Session, although they might have tried them themselves (*g*).

(*g*). The latter clause refer to all those cases which are punishable with, and in the opinion of the Magistrate presiding call for, a severer punishment than such Magistrate is competent to award. Such cases therefore are Session cases, or Magistrate's cases, according as they are tried, not triable.

In the case of offences created by special* and local laws, "Session case" means cases which are triable by the Court of Session or which the Magistrate commits to the Court of Session though he might have tried them himself.

* *Vide supra.*

"Magistrate's case."

"Magistrate's case" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by Magistrates and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session.

"Cognizable offence or case."

"Cognizable offence or case" means an offence for or a case in which a Police officer may, by any law in force for the time being, arrest without warrant (*h*).

(*h*). For these consult Schedule IV.

"Non-cognizable offence or case."

"Non-cognizable offence or case" means an offence for or a case in which a Police officer may not arrest without warrant:

"Summons case." "Summons case" means an offence of the class described in section one hundred and forty-eight: (q. v.)

"Warrant case." "Warrant case" means an offence of the class described in section one hundred and forty-nine: (q. v.)

"Bailable offence or case." "Bailable offence or case" means an offence for or a case in which bail may be taken under the fourth schedule to this Act, or by any other law in force for the time being:

"Non-bailable offence or case." "Non-bailable offence or case" means an offence for or a case in which bail may not be taken under the fourth schedule to this Act, or by any law in force for the time being.

PART II.

CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

"First, with regard to the arrangement of the Bill I may observe that, though the title of 'Code of Criminal Procedure' has been retained, it does not adequately describe the scope of the measure. It is a complete body of law on three distinct, but closely related, subjects—the constitution of the Criminal Courts, the conduct of criminal proceedings, and the prevention of crimes by interference beforehand.

"The first of these subjects is the constitution of the Criminal Courts. The Bill defines at once, comprehensively, and I hope quite plainly, two matters of importance about Magistrates, which are at present in a state of extreme obscurity and confusion. These are, the powers of Magistrates and their relation to each other. No branch of the law is either more important, or, as matters stand, more confused. The District Magistrates are, in fact—though their title would hardly convey the notion to a person unacquainted with the subject—the actual Governors of the country, and there is no matter on which, according to my observation, the most experienced Indian Administrators have expended so much care and thought, or to which they attach so much importance, as the definition of their position. It had come, in the course of time and under the teaching of experience, to be defined, though in a clumsy and intricate manner; and the Courts of Justice have been greatly perplexed by the difficulty of deciding what might be done by Magistrates of the District; what by full-power Magistrates; and what by Subordinate Magistrates of the first or second class. The obscurity appeared to me to arise, as most of the obscurity of law does arise, from the unfounded, but not by any means unnatural, error, into which nearly every one falls, that it is needless to express

things which are generally known, and that they may therefore be taken for granted. The result is that such expressions as 'the Magistrate,' 'the Magistrate of the District,' 'full-power Magistrate,' and so forth, are continually used in the existing Acts without any definition of their powers or of their relations to each other.

"This, I hope, we have now made as clear as it can be made, though a certain degree of intricacy is inseparable from the subject-matter, and could not be removed unless the whole of the executive arrangements by which the government of the country is carried on were very deeply modified. The intricacy arises from the following circumstances:—There are three separate points of view in which Magistrates must be regarded. *First*, they have different judicial powers; *secondly*, they have different powers in a multitude of miscellaneous matters connected with procedure, and these miscellaneous powers are liable to variation in particular cases; and *thirdly*, they stand in various relations to each other. This, no doubt, is intricate; but the intricacy could not be substantially lessened unless Government were prepared to alter the whole organization of the districts, which, of course, is out of the question. All, therefore, that can be done, is to describe the matter as clearly and shortly as possible."

Notes by Select Committee on Chapter II.

We have provided that the Criminal Courts shall have jurisdiction in offences created by special and local laws which are silent as to the tribunal intended, but no Court is to take cognizance of offences punishable with more than twice the maximum punishment which it can inflict, nor is it to inflict a punishment in excess of its powers.

We have cleared up the doubt which has hitherto existed as to whether all portions of the Code apply to European British subjects, by providing that, except in respect of the special privileges described under Chapter VI, and in respect of orders under Chapter XXXVII to give security in cases of bad livelihood, the Criminal Procedure Code shall be applicable to all persons alike.

CHAPTER II.—ss. 5—11.

Of Criminal Courts.

Grades of Criminal Courts.

5. Besides the High Courts, there shall be four grades of Criminal Courts* (*a*) in British India† (*b*)—

* S. 4.

† S. 1, n. (*a*).

(*a*). It should be remembered that "Criminal Courts" include every Judge or Magistrate or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any general proceeding, or otherwise the question might arise, what has become of the Courts of Justices of the Peace, of Cantonment Magistrates, &c., &c.

Whatever be the name given to any Criminal Court, it will be graded according to the powers with which the person or persons presiding over it is invested. The only Court not graded in the above is the Court of a Justice of the Peace, who is not also a Magistrate.

(*b*). Or rather in all British India, save and excepting the Presidency Towns. (S. 1.)

CH. II. ss. 5—7.

I.—The Court of the Magistrate of the 3rd class:

II.—The Court of the Magistrate of the 2nd class:

III.—The Court of the Magistrate of the 1st class:

IV.—The Court of Session (*c*).

(*c*). Before entering upon their respective offices, Judges, Magistrates and Justices of the Peace have to take and subscribe an oath. Power was given to the Government to dispense with the oath (Act XXI of 1837), and to substitute for it a declaration in writing.

The oath for N. W. P. (*Bengal exempted by C. O.* 11 *of* 1872) Sessions Judges (Regulation IX of 1793, s. 34) is as follows:—

"I, A. B., solemnly swear that I will truly and faithfully execute the duties of Judge of the Court of Circuit for the Division of ——; that I will administer justice according to the Regulations that have been or may be enacted by the Governor-General in Council, to the best of my ability, knowledge, and judgment, without fear, favor, promise or hope of reward; and that I will not receive, directly or indirectly, any present or nuzzur, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever, on account of any suit or prosecution to be instituted, or which may be depending, or have been decided in the Court of Circuit of which I am a Judge. Nor will I knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzzur, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever, on account of any suit or prosecution to be instituted or which may be depending, or have been decided in the said Court; nor will I, directly or indirectly, derive any advantage or emolument from any station, excepting such as the orders of Government do or may authorize: So help me God."

* S. 4.

What Officers to hold inquiries.

6. All inquiries* by Magistrates (*a*) shall be held according to the provisions hereinafter contained.

(*a*). The emphasis in this section is on the word "Magistrates." The Court of Session cannot hold any inquiry under this Act, nor can it take cognizance of any offence, until the offender has been duly committed by a competent officer. The only exception to this will be found in s. 472. The word "Magistrates" is thus defined in the General Clauses Act, and should be borne in mind.

"Magistrate."

(13.) "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure.

† S. 4
‡ S. 1, n. (*a*).

What Courts to try offences.

7. All criminal trials† in British India‡ shall be held before the Courts (*a*) specified in the fourth schedule to this Act, or before the Courts specified in any law (*b*) by which the offence is created, according to the provisions hereinafter contained.

(*a*). For the Court which may try any specified offence under a local or special law, see the Schedule of Local and Special Laws attached to Schedule IV of this Act.

(*b*). Offences may be tried by a Court superior to the Court specifically mentioned in column 7 of Schedule IV. For example, a Court of Session may try an offence entered in column 7 as triable by a Magistrate. Schedule IV, n. 3.

Offences under local and special laws.

8. Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or Officer before which or before whom they are to be tried,* may be inquired* into and tried,* according to the provisions hereinafter contained, by the Criminal Courts* appointed under this Act. But no such Court shall award any sentence in excess of its powers. * S. 4.

A Magistrate of the third class shall not try any such offence unless it is punishable with less than one year's imprisonment, nor shall a Magistrate of the second class try any such offence unless it is punishable with less than three years' imprisonment.

Where local and special laws name the jurisdiction by which certain offences created by them should be tried, such offences can only be tried by the specific jurisdiction therein prescribed. But where the local or special law is silent as to jurisdiction, the test as to whether any particular Court can try this or that offence before it is the one given in this Section, *viz.*, the amount of imprisonment with which the offence is punishable; and in punishing such offence no Court can exceed its ordinary powers. But where any special or local law gives special powers of punishment to all or to certain specified Magistrates, the Courts are no longer confined to their ordinary powers, and may impose the full amount of penalty allowed for the offence.

Appointment and removal of Judges and Magistrates.

9. All Judges† of Criminal Courts,‡ other than the High Courts, and Magistrates§ shall be appointed and may be removed by the Local Government; but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed. † S. 4, n (*e*). ‡ S. 4. § S. 6, n.

Saving of existing incumbents.

10. All existing Judges and Magistrates shall be deemed to have been appointed under this Act.

CHS. II., III. ss. 11—15.

Inquiry and trial in case of European British subjects.

11. Offences committed by European* British subjects shall be inquired† into and tried† according to the provision of Chapter VII, and not otherwise; but the other provisions of this Act shall apply to all persons without distinction of race unless a contrary intention is expressed (*a*).

* S. 71.
† S. 4.

(*a*). A contrary intention is expressed in s. 517, which enacts that European British subjects are exempt from the rules contained in Chapter XXXVIII (Security for good behaviour). In the same way the provisions of this Code do not apply to offences committed in the Presidency Towns.

Notes by Select Committee on Chapter III.

Besides the ordinary Courts, power is given to the Local Government to appoint Additional Sessions Judges and Assistant Sessions Judges, whose powers will be on the same footing as the Assistant Sessions Judges at present existing in Bombay.

CHAPTER III.—12—18.

Of Courts of Session.

Sessions Divisions.

12. Every province shall be divided into Sessions Divisions.

Power to alter Divisions.

13. The Local Government shall have power to alter, from time to time, the number or extent of such divisions.

Existing local jurisdictions of Sessions Courts to be Sessions Divisions.

14. The existing local jurisdictions of Courts of Session shall be Sessions Divisions, unless and until they are so altered.‡

‡ S. 38, n.

One Court for each Division.

15. There shall be a Court of Session in every Sessions Division.

§ S. 4.

It shall have power to try§ (*a*) any offence and to pass upon any offender any sentence (*b*) authorized by law, subject to the provisions of this Act.

(*a*). But it has no power to enquire into any offence whatever. Nor can it try any offence until the offender has been duly committed by an officer competent to commit offender to Court of Sessions. There is only one exception to this rule, for which see s. 472.

(*b*). The sentences authorized by law are—

I.—Death.
II.—Transportation.
III.—Penal Servitude.
IV.—Rigorous Imprisonment.
V.—Simple Imprisonment.
VI.—Fine.
VII.—Confiscation of property.
VIII.—Whipping.

I.—Sentence of death may be pronounced alone or in conjunction with punishment VI or VII (*vid. infr.*) or both. It is the *only* punishment for murder committed by a life convict. The Government of India or Government of the place where the offender shall have been sentenced may, without the offender's consent, commute this punishment for any other of the above, save whipping. (P. C., ss. 53, 54, 303, and s. 7, Act VI of 1864.)

II.—Transportation may be awarded as a punishment by itself or in conjunction with either punishment VI or VII (*vid. infr.*) or both. In certain cases it may be awarded for life, and it can never be given for a period less than seven years. In two offences *transportation for life must* be awarded: *viz.*, unlawful return from transportation and being a thug. Where offences are punishable with imprisonment for seven years and upwards, transportation may always be awarded in lieu of imprisonment. The sentence of transportation for life may, under exactly the same conditions as sentence of death, be commuted for imprisonment of either description not exceeding fourteen years. In calculating fractions of terms of punishment, transportation for life is to be considered equivalent to imprisonment for twenty years. The offender, until he is transported, is to be dealt with in exactly the same manner as when sentenced to rigorous imprisonment, the intervening period counting all the same as though he had been actually in transportation. The Court has not, in the sentence, to specify the place to which the offender is to be transported. The Supreme Government appoints a place or places within British Territories, and the Local Governments give order for all offenders so sentenced to be removed to such place or places. Ss. 319, 320, 322. *No European or American is to be sentenced to transportation.* (P. C., ss. 53, 55, 59, 226, 311 and Act XXIV of 1855.)

In Calcutta and the Panjáb it has been ruled that imprisonment cannot be commuted to transportation, if it be made up of two or more sentences of imprisonment amalgamated together. The convict should first be sentenced to imprisonment (and that rigorous according to Cal. H. C. C. L., S. W. R. I, 5) and his sentence commuted. (Cal. H. C. C. O. 9, 1866, S. W. R., C. L.; Vol. I, 5, 10; Vol. II, C. R., 1, Mootku Kora; III, C. R., 44, Tonoo Ram; V, 16, Mahanundo Bhundary; *Ibid*, 44, Shonaoollah; Jud. Com. Panj., III, 1865.)

III.—Penal Servitude may be awarded alone or in conjunction with either punishment VI or VII or both. It is always to be awarded to Europeans and Americans in lieu of transportation when they shall have been convicted of offences so punishable. (P. C., s. 56.)

IV.—Rigorous Imprisonment may be awarded *per se* or together with fine, and in some few instances with whipping. In certain specified

cases, confiscation of property may also be added. When it exceeds seven years, it may be changed to transportation for a period not less than seven years, and not more than the term with which the offence is punishable.

N. B.—The Court has always (where punishment of either description is prescribed by law) the option of directing that such imprisonment may be (1) wholly rigorous, (2) wholly simple, (3) for part of the term rigorous and for the rest simple. (Ss. 59, 60, P. C.)

Part of it may be awarded in solitary confinement. Solitary confinement is never, however, to exceed three months in the whole, nor to be administered save at intervals with periods of rigorous imprisonment intervening. Such intervening periods are not to be less in duration than the periods of solitary confinement. The periods of solitary confinement are never to exceed fourteen days, and if the whole sentence of imprisonment exceed three months, then such periods are not to exceed seven days.

Where the sentence of rigorous imprisonment does not exceed six months, the whole amount of solitary confinement is not to exceed one month; where it does not exceed one year, then the solitary confinement is not to exceed two months. (P. C., ss. 59, 73, 74.) Whipping as a conjoint punishment may only be awarded when the sentence of imprisonment does not exceed five years, and it must NEVER be administered to females. (S. 5, Act VI of 1864.)

The Panjab Judicial Commissioner and Advocate General say, that solitary confinement, as awarded by law, is continuous solitude day and night for more than 24 hours, but as jail discipline any prisoner may be kept during some portion of every 24 hours in a separate cell, provided such portion be not an unreasonable one, and due regard be had to his health, both mental and bodily. See also s. 281.

V.—Simple Imprisonment.—The whole of the note attached to rigorous imprisonment is applicable *totidem verbis* to simple imprisonment.

VI.—Fine may be given alone or conjointly with either punishment I or II or III or IV or V or VII or VIII, or with IV + VIII, or V + VIII. In the Penal Code, as a rule, no limit is fixed as to the amount of fine that may be imposed. In such cases the amount of fine to which the offender is liable shall not be excessive. (S. 63, P. C.)

Fine is thus the sole punishment prescribed by law, or it is either an alternative or an additional punishment, and this distinction has to be borne in mind when the fine imposed is not realised from the offender. In no case does a man necessarily escape the effects of this sentence from mere inability to pay. In the former instance (*i. e.*, when fine is the sole punishment prescribed by law) when the fine is not realised, it shall be competent to the Court to direct in the same sentence that in default of payment of fine the offender be imprisoned—

For a term not exceeding two months when the fine does not exceed 50 rupees.

For a term not exceeding four months when the fine does not exceed 100 rupees.

For a term not exceeding six months in any other case. (S. 67, P. C.)

It is nowhere stated whether this imprisonment should be rigorous or simple.

In the same way, similar powers are conferred upon a Court which awards fine as an additional or an alternative punishment. In this case, however, the scale prescribed for the imprisonment awarded in default is different. Such imprisonment must never exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence.

N. B.—In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years (s. 57, P. C.). The imprisonment may be in these latter cases of any description to which the offender might have been sentenced for the offence. (Ss. 64—66, P. C.) S. 309.

In all three cases the imprisonment terminates instantly whenever the whole fine is either paid or levied by process of law before the expiration of the term fixed for such imprisonment. Supposing, however, that only a portion is so laid up or realized, the imprisonment terminates as soon as the term suffered in default of payment has become or shall become less than proportional to the part of the fine still unpaid.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged. (Ss. 68, 69, P. C.)

For levy of fine, see s. 307.

For payment of it in compensation. (S. 308.)

The whole fine or any part which remains unpaid may be levied at any time within six years after passing of the sentence, or if the offender be under sentence of imprisonment for a longer period at any time, previous to the expiration of that period. If the offender dies within the above prescribed periods, any property of his legally liable for his debt is also liable for the fine or portion of fines still unpaid. (S. 70, P. C.)

In but few cases are Courts bound to award imprisonment in default of payment of fine. A discretionary power generally rests with them. Section 309 further provides that, in no case decided by a Magistrate where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

VII.—Forfeiture of Property is either

I.—Total.
II.—Partial.
III.—Specific.

Total forfeiture is an essential part of the punishment awarded to all who are guilty of waging, preparing to, or attempting to, or abetting the waging of war against the Queen. The Court *may* also punish with it all guilty of any offence punishable with death.

In these cases the convict still continues capable of acquiring property, but, as soon as acquired, such property goes absolutely to Government. As soon as his sentence is over, he can again acquire and hold property for his own benefit. But whether he be pardoned or have worked out his sentence, he can never lay claim to property that accrued to him before or during the term of his sentence. (Ss. 62, 121, 122, P. C.)

CH. III. ss. 15—17.

Partial forfeiture extends only to the rents and profits (accruing during the period of his sentence) of the whole estate, moveable and immoveable, of the convict.

Such order of forfeiture, however, is always subject to any provision that Government may allow to the family and dependents of the offender. Partial forfeiture can only be awarded to persons convicted of an offence for which they are transported or imprisoned for seven years or upwards: it is not necessarily part of the sentence, the Court *may* award it. (S. 52, P. C.)

Specific.—This extends to (I) property used in or intended to be used in or acquired by depredation on the territories of any Power at peace with the Queen; (II) property received with the knowledge that it has been taken in waging such war or committing such aforesaid depredation; (III) property purchased by a public officer who keeps when he ought not to do so.

In the last case, it is necessarily a part of the sentence, but not so in the two former. (Ss. 126, 127, 169, P. C.)

This punishment is never awarded *per se* but only in conjunction with punishment I or II or III or IV or V or VI, or II+VI, or III+VI, or IV+VI, or V+VI.

VIII.—*Whipping* can be awarded "*per se solus*," or in certain cases, as an additional punishment added to punishments IV or V or VI or IV+VI, or V+VI.

It can only be awarded by the Magistrate who tries the case, and not on reference or appeal. It must never be administered to any one if a Medical Officer certify or Justice of the Peace or other Officer present think that the offender is not in a fit state to undergo the punishment; *never* to females; nor (*c*) when given as an additional punishment to persons punished with more than five years' imprisonment. If awarded as an additional punishment by a Court whose sentence is open to revision by a superior Court, such Court should further add that such whipping be not inflicted until 15 days have elapsed, or if an appeal be made within 15 days, until such sentence have been confirmed by the superior Court.

The number of stripes are not to exceed 150 if the instrument used be a cat-of-nine tails, nor 30 if it be a common ratan that is used. (See ss. 310—313.)

For simultaneous conviction of offences, see s. 314; and for punishment of youthful offenders, see s. 318.

Appointment and powers of Sessions Judges.

16. There shall be a Sessions Judge for every Sessions Division. The Sessions Judge shall exercise all the powers* of the Court of Session in his Sessions Division.

*S. 15 & notes.

Appointment and powers of Additional and Joint Sessions Judges.

17. The Local Government may appoint Additional Sessions Judges or Joint Sessions Judges, who shall exercise† all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try‡ such cases only as the Local‡ Government

† S. 15 & notes.

‡ S. 4.

directs them to try,* or as the Sessions Judge of the Division makes over to them for trial.* CH. III. s. 18.

18. The Local Government may also appoint Assistant Sessions Judges, who shall exercise† all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of hearing appeals, and of passing sentences of death, or transportation, or imprisonment for more than seven years; but they shall try‡ those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order. * S. 4. † S. 15. ‡ S. 4.

Appointment and powers of Assistant Sessions Judges.

Any sentence of more than three years' imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify or annul such sentence of the Assistant Sessions Judge.

The Bombay High Court has ruled (5 Bom., 23, Cr. C.) that a Sessions Judge, on review, cannot alter a charge drawn up by his assistant. If he thinks there has been an error in such charge, he can refer the case to the High Court as a Court of Revision, who are empowered to deal with it according to the provisions of s. 297.

Notes by Select Committee on Chapter IV.

We have grouped, in several consecutive sections, the powers, judicial and miscellaneous, of Magistrates. Section 20 sets forth the punishments which Magistrates of the first, second and third classes may inflict: section 21 gives a list of all the principal miscellaneous magisterial powers, and the following sections, 22—29, specify which of these powers are to be inherent in each class of Magistrates, and which of them may be conferred on Magistrates by the Local Governments and the Magistrate of the District, respectively.

Sections 32—34 deal with the effect of irregularities. With a view to preventing trials being improperly set aside on account of irregularities not involving a substantial failure of justice, we have provided, in the case of all the most probable irregularities, what the precise effect of an irregularity shall be.

We have provided that the Magistrate of the District may distribute the criminal business of his district locally, by giving to specified Magistrates the power to entertain complaints in certain areas.

The position of the Magistrate of the District in relation to all other Magistrates having jurisdiction in the district has been distinctly defined: all other Magistrates, including Magistrates in charge of a division of a district, have been made subordinate to him, and we propose to invest him with power to withdraw any case or class of cases from a Subordinate Magistrate, and to try it himself or transfer it to any other Court of competent jurisdiction.

The Local Government is empowered to create divisions of districts, and we have clearly described the position of the Magistrate in charge of a division of a district, and his relations to the Magistrate and other local officials.

CH. IV. s. 19.

In the districts where there are Commissioners and Deputy Commissioners, we have provided that the Chief Executive Officer of a district may try, as a Magistrate, cases not punishable with death; but in any case in which a sentence of more than three years' imprisonment is passed, the order must be confirmed by the Court of Session.

We have provided for the creation of Special Magistrates and Benches of Magistrates.

We have provided that the High Court may transfer any case from one subordinate Court to another, or may itself dispose of it, following the procedure of the Court from which the case was transferred.

CHAPTER IV.—ss. 19—56.

Of Magistrates and their Powers.

"In this chapter, as regards their judicial powers, Magistrates are divided into three classes according to the maximum sentences which they can pass:—First Class Magistrates can sentence up to two years' imprisonment, and 1,000 rupees fine; Second Class Magistrates up to six months, and 200 rupees fine; Third Class Magistrates up to one month, and 50 rupees fine.

"Their miscellaneous powers are thirty-seven in number, and these are specified in s. 21. In ss. 20 to 30, both inclusive, we specify the powers which may be exercised by all Magistrates as such; those which may be exercised by Magistrates of the second and first class, and those which may be exercised by Magistrates in charge of a Division of a District as such. We also specify the powers with which these various classes of Magistrates may be invested, either by the Magistrate of the District, or by the Local Government.

"We next proceed to consider the Magistrates in their relation to the district in which they are quartered, and here we lay down distinctly (I think for the first time) that there shall be, in every District, a Magistrate of the District, to whom all other Magistrates in the District shall be subordinate; and that the Local Government may divide Districts into Divisions, and put Subordinate Magistrates of certain grades in charge of them.

"I think it will be found that the provisions of the Bill throw these various matters into as clear and precise a shape as the nature of the case admits of."

Magistrates to be of three classes.

19. Magistrates shall be either—

Magistrates of the 1st class,
Magistrates of the 2nd class, or
Magistrates of the 3rd class.

Under the old Code of Criminal Procedure, the classification was: I—Magistrate of full power; II—Subordinate Magistrate of the first class; III—Subordinate Magistrates of the second class. The three grades are still retained, it is the nomenclature only that has been altered. For the different power allotted to each grade, see the following sections.

All Magistrates have to take the following oath. In the N. W. P., a written declaration of the same nature by Act XXI of 1837 is substituted. For Subordinate Magistrates the words "Assistant," "Joint," &c., should be inserted before the word "Magistrate," the words "assist

in preserving" put for "preserve," and the necessary change made in the personal pronoun.

"I, A. B., appointed Magistrate of the Zillah of ——, solemnly swear, that I will, to the best of my ability, preserve the peace of the Zillah over which my authority extends; and I will act with impartiality and integrity, and will not exact or receive, nor knowingly allow any other person to exact or receive, directly or indirectly, any fee, reward or emolument whatsoever, in the execution of, or on account of any matter relating to, the duties of my office, excepting such as the orders of the Governor-General in Council do or may expressly authorize; and that I will perform the duties of my office according to the best of my knowledge, abilities, and judgment, conformably to the Regulations that have been or may be passed by the Governor-General in Council. So help me God."

Sentences which Magistrates may pass.

20. The powers of Magistrates* in respect to the trial† of offences and to passing sentences on persons convicted of them are as follows—

* S. 6, n.
† S. 4.

Powers of Magistrates, first class.

Magistrates of the first class may pass the following sentences:—

Imprisonment‡ not exceeding the term of two years (including such solitary§ confinement as is authorized by law);

‡ S. 15, n. IV, V.
§ S. 15, n. IV.

Fine‖ to the extent of one thousand rupees;

‖ S. 15, n. VI.

Whipping¶.

¶ S. 15, n. VIII.

Powers of Magistrates, second class.

Magistrates of the second class may pass the following sentences:—

Imprisonment** not exceeding six months (including such solitary confinement as is authorized by law);

** S. 15, n. IV, V.

Fine†† not exceeding two hundred rupees;

†† S. 15, n. VI.

Whipping‡‡.

‡‡ S. 15, n. VIII.

Powers of Magistrates, third class.

Magistrates of the third class may pass the following sentences:—

Imprisonment§§ not exceeding one month;

§§ S. 15, n. IV, V.

Fine‖‖ not exceeding fifty rupees.

‖‖ S. 15, n. VI.

A Magistrate of the third class may not pass a sentence of solitary confinement, or of whipping.

Any Magistrate may pass any lawful sentence, combining any of the sentences which he is authorized by law to pass.

CH. IV. ss. 20, 21

EXPLANATION.—A Magistrate may award imprisonment in default of payment of fine in addition to the full term of imprisonment which, under this section, he is competent to award.

Imprisonment may often by law be combined with fine or with whipping. In some cases it may be combined with both fine and whipping. Similarly, fine and whipping may be combined at times. See note to s. 15.

The provisions of s. 314 should also be borne in mind by Magistrates:—

Sentence in cases of simultaneous conviction of several offences.

314. When a person is convicted at one trial of two or more offences punishable under the same or different sections of the law for the time being in force, the Court may sentence him for the offences of which he has been convicted to the several penalties prescribed by such enactment or enactments which such Court is competent to inflict; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other.

* * * * * * * *

Provided also that, if the case be tried by a Magistrate (other than a Magistrate acting under s. 36), the punishment shall not, in the aggregate, exceed twice the amount of punishment which he is by his ordinary jurisdiction competent to inflict.

When any special or local law gives a Magistrate powers to pass a higher sentence than is granted him under s. 20, he is not restricted by either s 20 or the concluding clause of s. 8, para. 1. This latter clause provides only for those offences respecting which a local or special law has not clearly laid down within whose jurisdiction they lie. (Cal S. W. R., Suroop Chunder Dutt, VII, 29.)

Habitual offenders should, in accordance with the provisions of s. 315, be committed to the Court of Sessions.

Powers conferred upon Magistrates.

21. In addition to the powers given in section twenty, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:—

(1.) May be given by Local Government to first class Magistrate, and belongs to Magistrate of Division of District.

(2.) Belongs to Magistrates of Division of Districts.

(3.) Ditto ditto.

(1.) Power to make over cases to a Subordinate* Magistrate (s. 44).

(2.) Power to pass a sentence on proceedings recorded by a Subordinate* Magistrate (s. 46).

(3.) Power to withdraw cases and to try† or refer them for trial† (s. 47).

* Ss. 37, 41

† S. 4.

(4.) Belongs to Magistrates of Division of Districts.	(4.) Power to withdraw or refer appeals from convictions by Magistrates of the 2nd and 3rd classes (s. 47).
(5.) Belongs to all Magistrates.	(5.) Power to arrest an accused person found in Court (s. 104).
(6.) Belongs in limited manner to second class Magistrate, and in full to all others higher than second class.	(6.) Power to order the Police to investigate* an offence (s. 110).
(7.) Belongs to all Magistrates.	(7.) Power to record confessions or statements during a Police investigation* (s. 122).
(8.) Ditto ditto.	(8.) Power to authorize detention of a person during a Police investigation* (s. 124).
(9.) Local Government may confer on first, second, third class Magistrates. Magistrate of District may confer on first, second, third class Magistrates. Belongs to Magistrates of Division of Districts.	(9.) Power to hold an inquest (s. 135).
(10.) Local Government may confer in limited manner to second and third class. Magistrate of District may confer in limited manner to second and third class. Local Government may confer in full on first class. Magistrate of District may confer in full on first class. Belongs to Magistrate of Division of District.	(10.) Power to entertain complaints and receive Police reports (s. 141).
(11.) Local Government may confer in limited manner on second and in full on first class. Belongs to Magistrate of Division of District.	(11.) Power to entertain cases without complaint (s. 142).
(12.) Local Government may confer on second and third class. Belongs to first class and Magistrates of Divisions of Districts.	(12.) Power to commit for trial† (s. 143).

* S. 4.

† S. 4.

CH. IV. s. 21.		
	(13.) Local Government may confer on first class. Belongs to Magistrate of Division of District.	(13.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).
	(14.) *Belongs only to Magistrate of District.*	(14.) Power to direct warrant to landholder (s. 162).
	(15.) Belongs to all Magistrates.	(15.) Power to arrest offender in presence of Magistrate (s. 166).
	(16.) Ditto ditto.	(16.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (ss. 168 and 170).
	(17.) Ditto ditto.	(17.) Power to issue proclamation in cases judicially before him (ss. 171 and 353).
	(18.) Ditto ditto.	(18.) Power to attach and sell property in cases judicially before him (ss. 172 and 354).
* S. 4.	(19.) Local Government may confer on first class, and Magistrate of Division of District being also first class.	(19.) Power to try summarily (s. 222).
	(20.) Ditto ditto.	(20.) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes (s. 266).
	(21.) *Belongs only to Magistrate of District.*	(21.) Power to call for proceedings (ss. 295 and 296).
	(22.) *Ditto ditto.*	(22.) Power to quash convictions in certain cases (s. 328).

(23.) *Belongs only to Magistrate of District.*	(23.) Power to issue a search-warrant for letter in Post Office (s. 369).
(24.) Belongs to all Magistrates.	(24.) Power to endorse a search-warrant and order delivery of thing found (ss. 372, 373 and 376).
(25.) Belongs to first class Magistrates, and Magistrates of Divisions of Districts.	(25.) Power to issue search-warrant otherwise than in the course of an inquiry* (s. 377).
(26.) *Belongs to Magistrate of District only.*	(26.) Power to revise bail orders (s. 398).
(27.) Belongs to all Magistrates.	(27.) Power to sell perishable property of a suspicious character (s. 415).
(28.) Local Government may confer on first class Magistrates. Belongs to Magistrate of Division of District.	(28.) Power to sell suspicious or stolen property (s. 417).
(29.) Belongs to first class Magistrates, and to Magistrates of Divisions of Districts.	(29.) Power to demand security to keep the peace (s. 491).
(30.) *Belongs to Magistrate of District only.*	(30.) Power to discharge recognizances to keep the peace (s. 500).
(31.) Belongs to first class Magistrates, and to Magistrates of Divisions of Districts.	(31.) Power to demand security for good behaviour (ss. 504 and 505).
(32.) *Belongs to Magistrate of District only.*	(32.) Power to discharge person bound to be of good behaviour (s. 511).
(33.) Local Government may confer on first, second, third class Magistrates. Magistrate of District may confer on first, second, third class Magistrates. Belongs to Magistrate of Division of District.	(33.) Power to issue order to prevent obstruction, &c. (s. 518).
(34.) Same as (33.)	(34.) Power to issue order prohibiting repetition of nuisance (s. 519).

* S. 4.

CH. IV. ss. 21, 22.

(35.) Local Government may confer on first class Magistrates.
Belongs to Magistrate of Division of District.

(36) & (37.) Belongs to Magistrates of first class, and Magistrates of Divisions of Districts.
N. B.—All the powers here given belong to Magistrate of District.

(35.) Power to make orders, &c., in local nuisance cases (s. 521).

(36.) Power to make orders, &c., in possession cases (s. 530).

(37.) Power to make orders of maintenance (s. 536).

All these powers hereinbefore enumerated exist in a Magistrate of the District by virtue of his office as such. (S. 30)

Powers Nos. 3, 6, 9, 10, 13, 25 and No. 1, making over a case taken upon complaint to another Magistrate, even when exercised by an officer who has no power to use them, will not vitiate his proceedings. (S. 32.)

On the other hand, powers Nos 2, 11, (18—21), 23, 26 (28—37) when exercised by an officer not duly empowered, render that officer's proceedings null and void. (S. 34.)

Powers common to all Magistrates.

22. Magistrates of all classes shall, as such, have the following powers:—

(1.) Power to arrest an accused person found in Court (s. 104).

(2.) Power to record confessions or statements during a Police investigation* (s. 122).

(3.) Power to authorize detention of a person during a Police investigation* (s. 124).

(4.) Power to arrest offender in the presence of Magistrate (s. 166).

(5.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (ss. 168 and 170).

(6.) Power to issue proclamation in cases judicially before him (ss. 171 and 353).

(7.) Power to attach and sell property in cases judicially before him (ss. 172 and 354).

(8.) Power to endorse a search-warrant and order delivery of thing found (ss. 372, 373 and 376).

(9.) Power to sell perishable property of a suspicious character (s. 415).

* S. 4.

Powers which Local Government and Magistrate of the District may confer on Magistrates of the 3rd class.

23. In addition to the powers mentioned in section twenty-two a Magistrate of the 3rd class may be invested with the following powers:—

(*a.*) *By the Local Government*—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try* or to commit for trial* (s. 141). * S. 4.

(3.) Power to commit for trial* (s. 143).

(4.) Power to issue order to prevent obstruction, &c. (s. 518).

(5.) Power to issue order prohibiting repetition of nuisance (s. 519).

(*b.*) *By the Magistrate of the District*—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial† (s. 141). † S. 4.

(3.) Power to issue order to prevent obstruction, &c. (s. 518).

(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

Powers of Magistrates of the 2nd class.

24. Magistrates of the 2nd class shall, as such, in addition to the powers mentioned in section twenty-two, have the following power:—

(1.) Power to order the Police to investigate an offence in which the Magistrate has jurisdiction to try† or to commit for trial‡ (s. 110). ‡ S. 143.

Powers which may be conferred on Magistrates of the 2nd class.

25. In addition to the powers given and referred to in section twenty-four, a Magistrate of the 2nd class may be invested with the following powers:—

(*a.*) *By the Local Government*—

(1.) Power to hold inquests (s. 135).

CH. IV. ss. 25, 26.

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try† or to commit for trial* (s. 141).

* S. 143.

(3.) Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial* (s. 142).

† S. 4.

(4.) Power to commit for trial† (s. 143).

(5.) Power to issue order to prevent obstruction, &c. (s. 518).

(6.) Power to issue order prohibiting repetition of nuisance (s. 519).

(*b.*) *By the Magistrate of the District*—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try‡ or to commit for trial* (s. 141).

‡ S. 4.

(3.) Power to issue order to prevent obstruction, &c. (s. 518).

(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

Powers of Magistrates of the 1st class.

26. Magistrates of the 1st class shall, as such, in addition to the powers mentioned in sections twenty-two and twenty-four, have the following powers :—

§ S. 4.

(1.) Power to commit for trial§ (s. 143).

(2.) Power to issue search-warrant otherwise than in the course of an inquiry§ (s. 377).

(3.) Power to demand security to keep the peace (s. 491).

(4.) Power to demand security for good behaviour (ss. 504 and 505).

(5.) Power to make orders, &c., in possession cases (s. 530).

(6.) Power to make orders of maintenance (s. 536).

Powers which may be conferred on Magistrates of the 1st class.

27. In addition to the powers given and referred to in section twenty-six, a Magistrate of the first class may be invested with the following powers :—

(*a.*) *By the Local Government*—

(1.) Power to make over cases taken up on complaint, &c., to a Subordinate* Magistrate (s. 44).

* Ss. 37, 41. S. 141, n.

(2.) Power to hold inquests (s. 135).

(3.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(4.) Power to entertain cases without complaint (s. 142).

(5.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).

(6.) Power to try summarily (s. 222).

(7.) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes (s. 266).

(8.) Power to sell suspicious or stolen property (s. 417).

(9.) Power to issue order to prevent obstruction, &c. (s. 518).

(10.) Power to issue order prohibiting repetition of nuisance (s. 519).

(11.) Power to make orders, &c., in local nuisance cases (s. 521).

(*b.*) *By the Magistrate of the District*—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(3.) Power to issue order to prevent obstruction, &c. (s. 518).

(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

CH. IV. ss. 28, 29.

Powers of Magistrates of Divisions of Districts.

28. Magistrates who, under the provisions of section forty, are Magistrates of Divisions of Districts shall, as such, have all the powers given to Magistrates of the first class, and referred to in section twenty-six, and, in addition, shall have the following powers:—

(1.) Power to make over cases to a Subordinate Magistrate (s. 44).

(2.) Power to pass sentence on proceedings recorded by a Subordinate* Magistrate (s. 46).

(3.) Power to withdraw cases, but not appeals, and to try† or refer them for trial† (s. 47).

(4.) Power to hold inquests (s. 135).

(5.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(6.) Power to entertain cases without complaint (s. 142).

(7.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).

(8.) Power to sell suspicious or stolen property (s. 417).

(9.) Power to issue order to prevent obstruction, &c. (s. 518).

(10.) Power to issue order prohibiting repetition of nuisance (s. 519).

(11.) Power to make orders in local nuisance cases (s. 521).

Provided that, if a Magistrate‡ of a Division of a District exercise the powers of a Magistrate of the second class, he shall not have power to demand security to be of good behaviour.§

Powers which Local Government may confer on Magistrates of Divisions of Districts.

29. In addition to the powers given and referred to in section twenty-eight, the Local Government may confer on a Magistrate‖ of a Division of a

* Ss 37, 41.

† S. 4.

‡ S 40.

§ Ss. 504, 505.

‖ S. 40.

District, exercising the powers of a Magistrate of the first class, the following powers:—

(1.) Power to try* summarily (s. 222). * S. 4.

(2.) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes (s. 266).

Powers of Magistrates of Districts.

30. Magistrates† of Districts may, as such, exercise all the powers mentioned in section twenty-one. † S. 35.

Saving of other powers.

31. All other powers given by this Act or by any other law in force may be exercised by the officers or Courts to whom or to which they are given.

Irregularities which do not vitiate proceedings.

32. If any Magistrate, not being empowered by law in that behalf, does any one of the following things:—

(1.) If he makes over a case, taken up on complaint, &c., to another Magistrate,

(2.) If he withdraws a case and tries‡ it himself, or refers a case for trial,‡ ‡ S. 4.

(3.) If he orders the Police to investigate‡ an offence,

(4.) If he holds an inquest,

(5.) If he entertains a complaint or receives a Police report,

(6.) If he issues process for the apprehension of a person within his local jurisdiction who has committed an offence outside his local jurisdiction,

(7.) If he issues a search-warrant otherwise than in the course of an inquiry,§ § S. 4.

his proceedings shall not be set aside on the ground that he was not so empowered.

It should be clearly understood that only when acting in good faith will a Magistrate necessarily be saved by this section when trespassing. The object of this section is not to grant license to Magistrates to do acts which they are not authorized to do, but to prevent trials being

CH. IV. ss. 33, 34.

improperly set aside on account of irregularities not involving a substantial failure of justice.

For a similar section to the above, *vide* ss. 70 and 114.

Under the Bombay Gambling Act (III of 1866) a complaint is necessary prior to the issue of a warrant; yet if complaint be not made and evidence justifying the conviction produced, the above irregularity will not vitiate subsequent proceedings. (Bomb. H. C., Crown, V., 1.)

* Ss. 23, 25, 26, 143.

† S. 4.

When irregular commitments may be validated.

33. If any Magistrate,* not being empowered by law, commits an accused person to take his trial† before a Court of Session or High Court, the Court to which the commitment was made may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of the committing Magistrate during the inquiry† and before the order of commitment.

If such Court considers that the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry,† and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry† by a competent Magistrate.

The objection may be made at any time from the beginning of the inquiry until the actual record of committal. Should objection be thus raised, the Magistrate should at once stay proceedings and proceed according to s. 45.

The attention of Sessions Judge cannot be too strongly drawn to the explanation given in s. 197.

EXPLANATION.—A commitment once made by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

This explanation applies also to section one hundred and ninety-six.

Irregularities which render proceedings void.

34. If any Magistrate, not being empowered by law in that behalf, does any of the following things, his proceedings shall be void; that is to say:—

(1.) If he passes a sentence on proceedings recorded by another Magistrate,

(2.) If he entertains a case without complaint,

(3.) If he attaches and sells property under section 172,

(4.) If he tries* an offender summarily,
(5.) If he decides an appeal,
(6.) If he calls for proceedings,
(7.) If he issues a search-warrant for a letter in the Post Office,
(8.) If he revises a bail order,
(9.) If he sells suspicious or stolen property under section 417,
(10.) If he demands security to keep the peace,
(11.) If he discharges recognizances to keep the peace,
(12.) If he demands security for good behaviour,
(13.) If he discharges a person lawfully bound to be of good behaviour,
(14.) If he makes an order in a local nuisance case,
(15.) If he issues an order to prevent an obstruction,
(16.) If he prohibits the repetition of a nuisance,
(17.) If he makes an order in a possession case or,
(18.) If he makes an order for maintenance.

* S. 4.

THE MAGISTRATE OF THE DISTRICT.

Magistrate of the District.

35. In every district there shall be a Magistrate of the first class appointed by the Local Government† who shall be called the Magistrate of the District and shall exercise throughout his district all the powers‡ of a Magistrate.

† S. 36, n. (a).

‡ Ss. 20, 21.

Powers with which Deputy Commissioners and chief executive officers of District may be invested.

36. In the territories subject to the Lieutenant-Governor of the Panjáb and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burma, in Coorg, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government (a) may invest the Deputy Commissioner or other chief officer charged with the

CH. IV. s. 36.

executive administration of the district in criminal matters, with power to try* as a Magistrate (*b*) all offences not punishable with death, and to pass sentence (*c*) of imprisonment† for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine (*d*),‡ or of whipping,§ or any combination of these punishments authorized by law (*e*); but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy Commissioner is subordinate. Such Sessions Judge may either confirm, modify or annul any sentence referred for confirmation.

* S. 4.

† S. 15, n. IV, V.

‡ S. 15, n. VI.

§ S. 15, n. VIII.

(*a*). By notification 2052 of 1871, the Chief Commissioner, Central Provinces, is invested with the powers of declaring by what officers powers given in this Code shall be exercised.

(*b*). To exercise all the powers necessary for trial that a Magistrate has, *e. g.*, many cases punishable with imprisonment for seven years are ordinarily triable only by a Court of Session, and after commitment duly made by some subordinate Court, and with the aid of jurors and assessors, &c. This section enables Deputy Commissioners to deal with such cases *ab initio* without any commitment and without jurors, &c. The procedure given under Chap. XVII should be followed in these cases, not that given under Chap. XIX.

(*c*). The chief officer empowered under this section can also punish by transportation, penal servitude, forfeiture of property. See notes II, III & VII to s. 15. (S. W. R., IX, C. R., 6, Boodhoa.)

(*d*). Fine is unlimited in amount.

(*e*). The Calcutta High Court (S. W. R., IV, C. L., 12, and Judicial Commissioner, Central Provinces, XV, 1867, and of Oudh, 78, 1865), have ruled that cases of a specially aggravated nature, though triable by Deputy Commissioners (if not punishable with death) should still be committed to the Sessions; so also where the accused are old and notorious offenders. The object of the section is not to invest Magistrates with power to award sentences more severe than they can ordinarily give; it only gives them an extended Magisterial jurisdiction and power to take up and try certain cases ordinarily triable only by a Session Judge in addition to those cognizable exclusively by a Magistrate.

No appellate or revisional jurisdiction is given under this Act. (Judicial Commissioner, Panjáb, R., 33, 1862—1864, Oudh 6, 1867.)

The only cases Deputy Commissioners or Chief Officers empowered under this section will have to commit to Sessions Judge will be—

(1) Offences punishable with death,

(2) Offences which such Officer thinks deserve (if accused be found guilty), and are punishable with more than seven years' imprisonment.

(3) Offences triable by a Sessions Judge which have been inquired into by an officer [exercising the powers of (a) Magistrate] other than Deputy Commissioner. No power is given to a Sessions Judge to alter

a conviction under this section. Should he wish to do so, he should refer the case to the High Court as a Court of Revision. (S. 297.)

In Oudh, Deputy Commissioners are instructed to exercise with caution and discretion these powers; they should not deal as Magistrates with cases of gross attempt at murder only by accident failing of success and attrocious robberies accompanied with personal injury. Such should be committed to the Commissioner's Court. See also s. 314 n., and again s. 46 n. (*g*).

SUBORDINATE MAGISTRATES.

Subordinate Magistrates.

37. The Local Government* may appoint as many other persons, besides the Magistrate of the District,† as it thinks fit, to be Magistrates of the first, second or third class in the District.‡

* S. 36, n. (*a*).
† S. 35.
‡ S. 20.

All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District nor the Subordinate Magistrates shall be subordinate to the Sessions Judge, except to the extent and in the manner provided by this Act.

Proviso.

The Local Government shall not have power to direct that any Magistrate may try§ any offence which Magistrates of his class are not authorized to try,§ or pass any sentence which Magistrates of his class are not authorized to pass by section twenty.

§ S. 4 & Sched. IV.

It signifies not by what name such other Magistrates be ordinarily known (Joint Magistrate, Cantonment Magistrate, Honorary Magistrate, or the like); they can only exercise the powers of the class to which they belong, and are one and all subordinate to the Magistrate of the District (Judicial Commissioner, Panjáb, R., 32, 1862—1864); and it should further be borne in mind that every Magistrate of a District or Magistrate of a Division of a District has the power of issuing orders when necessary. These orders, if in accordance with law, must be obeyed by all subordinate Magistrates.

For the purposes of S. 295, all Magistrates are subordinate to the Sessions Judges.

Power to determine local jurisdiction of a Magistrate of District.

38. The Local Government|| may, by notification in the official Gazette, prescribe the local limits of the jurisdiction of a Magistrate of the District,¶ and may by such notification from time to time alter such local limits.

|| S. 36, n. (*a*).
¶ Ss. 21, 30.

CH. IV. ss. 39, 40.

This power was given by Governor-General in Council to Chief Commissioner, Central Provinces. (Order 2052 of August 1871.)

By Notification No. 1035 A, dated 21st June 1872, the local jurisdiction of the Magistrates of Allahabad has been extended to the portion of territory added by the States of Bundelkhand to the British Government for the purposes of the East Indian Railway lying between the western boundary of the Allahabad District and the Railway Station at Sutna, with the railway line, buildings, and station standing upon it, exclusive of the Railway Station at Sutna, and house and grounds attached to the same; and under No. 879, Home Department, dated 31st May 1871, the Governor-General takes under his immediate authority the rest of the line up to the eastern boundary of the Jubbulpore District, and places it under the jurisdiction of the Chief Commissioner, Central Provinces. Similar powers given to Sessions Judge of Allahabad. (Notification 20 of 1869.)

Division of Districts into divisions.

Existing divisions preserved.

39. The Local Government may divide any district into divisions, and from time to time alter their limits. All existing divisions of districts which are now usually put under the charge of a Magistrate (*a*) shall be divisions until their limits are so altered (*b*).

(*a*). By special order duly notified in the Government Gazette, not by a Magistrate's rúbekári. (S. N. A. Agra, 20, 1863.)

In the provinces of Lower Bengal, the system of separate officers in charge of separate divisions under the general control of the Magistrate of the District has long been in force. The Government there has also notified that the Joint Magistrate, or, if there be no Joint Magistrate, the senior first class Magistrate shall be the Magistrate in charge of the Sudder (principal) Division of the District to which he is appointed.

(*b*). This power delegated by Governor-General in Council to Chief Commissioner, Central Provinces. (O. 1661, dated 5th October 1871.)

Local Government may put Magistrate in charge of division.

* S. 36, n. (*a*).

40. The Local Government* may place any Magistrate of the 1st or 2nd class† in charge of a division of a district.‡

† S. 20.

‡ S. 39.

Such Magistrate shall be called a Magistrate of a Division of a District and shall exercise the powers§ conferred on him under this Act, or under any law for the time being in force, subject to the control of the Magistrate of the District.

§ Ss. 28, 29.

Delegation of power to Magistrate of District.

|| S. 36, n. (*a*).

The Local Government|| may, if it thinks fit, delegate its power under this section to the Magistrate of the District.¶

¶ Ss. 31, 30, 35.

Magistrates in charge of Divisions of Districts do not, like Magistrates of Districts, necessarily possess all the powers of Magistrates: they have the powers belonging to the class in which they are graded, and the powers given in ss. 26, 28; if they be first class Magistrates, the Local Government may also confer on them the powers given in s. 29.

See further note (*a*) on s. 39.

Subordination of officers to Magistrate of Division of District.

41. Every Magistrate in a Division* of a District shall be subordinate to the Magistrate of the Division† of the District, subject, however, to the general control of the Magistrate of the District.‡

* S. 39. † S. 40. ‡ Ss. 21, 30, 35.

Special Magistrates.

42. The Local Government§ may confer upon any person all or any of the powers of a Magistrate‖ of the 1st, 2nd, or 3rd class, in respect to particular offences, or to a particular class or particular classes of offences, or in regard to offences generally, in any part of a district or in any one or more districts, subject to such Local Government.

Such Magistrates shall be called "Special Magistrates."

§ S. 36, n. (*a*). ‖ Ss. 20—27.

Under this would come the Superintendent of Police in the Governor-General's Camp or the Camp of the Commander-in-Chief, District Superintendents of Police, Honorary Assistant Commissioners in Oudh, Superintendents of Jails, Canals, Forest officers, and others such.

Mode of conferring powers.

43. In conferring powers under this Act the Local Government¶ may empower persons specially by name, or classes of officials generally by their official titles.

¶ S. 36, n. (*a*).

Thus, in Lower Bengal, it has been notified that the Joint Magistrate, or where there is no Joint Magistrate, the senior first class Magistrate shall always be the Sudder Division Magistrate. See n., s. 141.

Transfer of criminal cases to Subordinate Magistrate.

44. The Magistrate** of the District or any Magistrate†† of a Division of a District, may make over any criminal case taken up by him on suspicion, or brought before him on complaint, or on report by the Police, for inquiry‡‡ or trial‡‡ to any Magistrate subordinate§§ to him, to be dealt with to

**Ss. 21, 30, 35. ††Ss. 28, 29, 40. ‡‡ S. 4. §§ Ss. 37, 41.

CH. IV. ss. 44, 45.

the extent of the powers (*a*) with which the Subordinate* Magistrate may have been invested under the provisions hereinbefore contained.

* Ss. 37, 41.

The Magistrate making the reference may, if the case was brought forward on complaint,† before such reference, examine‡ the complainant as prescribed in this Act; but if he does not do so, the Magistrate to whom the case is referred shall proceed‡ as if the complaint had been made to him.

† Ss. 139, &c.

‡ Ss. 144, &c.

The order of reference shall be recorded in a proceeding, and, if the case has been brought forward on the report of a Police officer, shall be recorded on such report;§ and all processes† issued for causing the attendance of the accused person or the witnesses‖ shall direct them to attend before the Magistrate to whom the case has been referred.

§ S. 127.

‖ Ss. 350, &c.

The Magistrate making the reference may, if he thinks proper, retransfer to his own file the case referred under paragraph one of this section, and when he has done so, and not before, may proceed therein.

For full information as to the manner, time and place of taking a complaint, how such complaints are to be framed, recorded, &c., see notes on s. 141. Proceedings on an inquiry are altogether preliminary, and undertaken for the purpose of ascertaining the fact, for the discovery and apprehension of offenders, and for bringing accused persons for trial before a competent Court. They can be made by the Police (s. 110) or by any Magistrate, but a trial can only be held by, and be referred to, a Court of Judicature declared competent by this Code to try the offence in question.

(*a*). Thus cases which must be committed to a Court of Sessions cannot (save for inquiry) be made over to an officer who is not empowered to commit. Similarly, cases cognizable by a Magistrate of first class only cannot be made over for trial to Magistrates of lower classes.

The order of reference should be signed with the Magistrate's signature in full, not initialled or done with a stamp or seal.

Procedure of Magistrate in cases beyond his jurisdiction.

45. If, in the course of a proceeding before a Magistrate,¶ the evidence** appears to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent†† to try,‡‡

¶ S. 6, n.

** S. 4, n. (*d*).

†† Sched. IV.

‡‡ S. 4.

or for which he is not competent* to commit the accused person for trial,†

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate,‡ or to such other Magistrate, having jurisdiction (*a*), as the Magistrate of the District§ directs.

* Ss. 21, 143.
† S. 4.
‡ Ss. 37, 41.
§ Ss. 21, 30 35.

(*a*). This should be a Magistrate competent to try or commit for trial the case under trial.

The Magistrate to whom the case is submitted shall either try† the case himself; or refer it to any officer, subordinate‡ to him, having jurisdiction; or he may commit* the accused person for trial.†

In any such case, such Magistrate or other officer as aforesaid shall examine (*b*) the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

(*b*). When a case has been referred under this section, a Magistrate can *never*, after mere perusal of the proceedings, dismiss the case. He is bound himself to proceed with the case in accordance with the provisions of Chapters XI—XVIII before he acquits the accused. (Mad. S. P., July 16, 1862.)

This section applies only to cases which the Magistrate is not competent to try; for procedure in cases which are triable by him but which, in his opinion, call for a severer sentence, see following section.

But any statement‖ or confession duly made by an accused person in the course of the proceedings before the Magistrate, before whom the case was originally brought, shall be admissible as¶ evidence in all subsequent proceedings.

‖ Ss. 122, 193.
¶ S. 4, n. (*d*).

46. Whenever a Magistrate of the 2nd** or 3rd class having jurisdiction, finds (*a*) an accused person guilty, and considers that he ought to receive (*b*) a more severe punishment than such Magistrate is competent to adjudge, he may record†† the finding and, if sentence has not been passed, may submit his proceedings, and forward the accused person to the Magistrate‡‡ of the District, or to the Magistrate of the Division of the District, to whom he is subordinate†† (*c*).

** S. 20.
†† S. 464.
‡‡ S. 35.

Procedure when Magistrate cannot pass sentence sufficiently severe.

(*a*). In cases triable only by the Sessions Court, no Subordinate Magistrate (unless specially empowered) has power to record a finding of any description.

CH. IV. s. 46.

(*b*). The Calcutta High Court (S. W. R., VII, C. L., 15), looking to the words "receive a more severe punishment," have ruled that a Magistrate to whom a case has been referred under this section has no power to pass a sentence of whipping, of which, with respect to other punishments, it cannot be predicated that it is more or less severe. The Oudh Commissioner following them says, whipping is included when the case is from a Subordinate Magistrate of the third class. The Madras Advocate General, looking to the words "such sentence or order in the case as he deems proper and as is according to law," gave as his opinion that Magistrates may, under this section, pass sentences of whipping. (Mad. G. O., 466, April 1864.)

See also Jud. Com., C. P., XI., 1865, who told all Subordinate Magistrates to send up cases in which punishment of whipping is awardable under this section.

In the Central Provinces (Jud. Com., 360, 1864), Subordinate Magistrates have been instructed, where the prisoner is an old offender, to take evidence as to former convictions, and if they find guilty to refer the case under this section for greater punishment.

(*c*). A Subordinate Magistrate acted correctly in referring a case to the Assistant Magistrate in charge of the sub-division to which he was attached. (Nidhee Telinee, S. W. R., XI, 7.) But any District Magistrate can, by ss. 21, 47, withdraw a case, try it himself, or refer to any other competent Court.

The Magistrate, to whom the proceedings are submitted, may, if he thinks fit (*d*), examine* the parties (*e*) and recall and examine any witness who has already given evidence in the case; and may summon† any further witnesses and take their evidence;‡ and shall pass such judgment, sentence or order§ in the case as he deems proper, and as is according to law (*f*): Provided that he shall not exceed the powers ordinarily exercisable by him under section twenty of this Act.

* Ss. 190, 193, 207, 218, 331, 342, &c.

† Ss. 152 *et seq.*, also s. 351.

‡ S. 331 *et seq.*

§ Ss. 461, &c.

(*d*). The Judicial Commissioners, Panjáb, R. 69, 1862—1864; C. P., 2652, 1865; and Oudh, have told Magistrates that, in cases referred under this section, they need not hold a fresh trial, but they must pass some order; where they think (contrary to the Subordinate Magistrate) that the accused is not guilty, they *must* acquit him.

They cannot, however, commit the accused to the Sessions Court upon the proceedings taken by their subordinate.

Bhikaree Mullick, S. W. R., X, 50.

(*e*). The Calcutta High Court (Ganesh Sircar, S. W. R., VII, 38) have ruled that the accused has a right to be present or be represented at the subsequent proceedings under this section, and to be heard in his defence. Where this had not been done, the District Magistrate's proceedings were quashed, and he was told to try the case afresh.

(*f*). Magistrates should invariably peruse the entire record, and ordinarily examine the accused before passing sentence.

The Bombay High Court (Guná Bin Ragnák, III, 29, Cr. Cas.) pronounced illegal a District Magistrate's order, by which he directed Subordinate Magistrates, when they thought it likely that a case *within*

their jurisdiction would call for a more severe sentence than they could award at once, to forward it to an officer (having jurisdiction) who could pass a sufficiently severe sentence.

Magistrate may, in the first instance, commit accused for trial before Court of Session.

The Magistrate who originally dealt with the case may, if he is empowered* to hold inquiries† into cases† triable by the Court of Session and to commit persons to take their trial† before such Court, instead of submitting his proceedings to another Magistrate (*h*), commit the accused person for trial† before the Court of Session instead of finding him guilty (*g*).

* S. 21.
† S. 4.

(*h*). The Madras High Court and also the N. W. P. have distinctly laid down that a District Magistrate cannot cancel a commitment made by a duly empowered Magistrate. (Mad. H. Ct., 1864.)

The Calcutta High Court (II, S. W. R., C. L., 19) have ruled that where a Subordinate Magistrate duly empowered to make commitments wishes to forward a case under this section, and such case is one cognizable either by Magistrate of District or Court of Sessions, he should (though not legally bound) refer such case to the Magistrate of District for trial: the time of the Sessions Judge being more valuable.

(*g*). By the Judicial Commissioner, Panjáb (2993, 1864), Assistant Magistrates, first class, were told that, in cases cognizable by and tried by themselves, when they have found an accused guilty, they cannot refer them for enhanced punishment to Deputy Commissioners, as a Deputy Commissioner has no greater power in ordinary cases. An Assistant may, however, after concluding an inquiry, represent that the accused, if found guilty, will require more severe punishment. Then the Deputy Commissioner may, under ss. 21, 47, bring the case on his own file, examine the witnesses, and try the case himself. If he does not do so, the first class Magistrate must try the case himself or commit it to the Sessions. This is laid down still more clearly now by the words "shall not exceed the power *ordinarily* exerciseable by him under s. 20," &c. Deputy Commissioners should try and avoid such cases, if triable by themselves, going before Assistants.

The Calcutta High Court (IV, S. W. R., C. L., 12) say that s. 36 only gives extended Magisterial jurisdiction. In cases triable by Magistrates only and referred under this section, the Magistrate is restricted to his ordinary powers. In cases triable by a Magistrate or Sessions Judge, his extraordinary power come into play, but he *must try the whole case himself.*

Magistrate may withdraw or refer cases.

47. Magistrates‡ of Districts and Magistrates§ of Divisions of Districts may respectively withdraw (*a*) any criminal case from any Magistrate subordinate‖ to them, and may inquire¶ into or try¶ the case themselves, or refer it for inquiry¶ or trial¶ to any other such Magistrate** competent to inquire¶ into or try¶ the same.

‡ S. 35.
§ S. 40.
‖ Ss. 37, 41.
¶ S. 4.
** Sched. IV.

CH. IV. ss. 47—49.

(a). The Magistrate of the District is in nowise fettered by the co-ordinate jurisdiction of any Division or Cantonment Magistrate, and when he sends for a case from a subordinate in his District, that Subordinate must send it to him. (Cal. H. Ct., 504, 1864; Mad. S. P., July 18, 1864; J. C. Panj., R. 109, 1862—1864; Troyloko Nath Sircar, II, S. W. R., C. R., 64.)

The Calcutta High Court (600, 1864), held, that where a Subordinate Magistrate of first class and also Justice of Peace has examined or remanded for further enquiry a European British subject, the Magistrate cannot withdraw the case from his subordinate's file, but where his subordinate has not done anything save in his capacity as Magistrate he can do so. S. 11 implies the contrary.

Cases once committed to the Sessions by an officer duly empowered to commit cannot be interfered with by District or Division Magistrate. (C. O., S. N. A., Agra, 17, 1864; s. 197.)

Whenever the disposal by a Canal Officer of a case of breach of Canal Rules will involve a delay of more than 14 days, or will involve the summoning of parties and witnesses to a greater distance than that of the nearest Magistrate competent to receive and dispose of the complaint, the case should be transferred for disposal to the latter. (Panj. Bk. C., IV of 1870.)

* S. 35.
† Ss. 37, 41.
‡ Ss. 19, 20, 37.

Magistrates* of Districts may withdraw any criminal appeal from any Subordinate† Magistrate who has been authorized to hear appeals from the convictions of Magistrates‡ of the 2nd and 3rd classes, and may refer criminal appeals to any competent Magistrate subordinate† to them.

§ S. 36, n. (a).
‖ S. 35.
¶ Ss. 37, 41.
** S. 40.

Local Government may empower Magistrates of Districts to withdraw classes of cases.

48. The Local Government§ may authorize the Magistrate‖ of the District to withdraw from the Magistrates¶ subordinate to him, whether in charge of divisions** of districts or not, either such classes of cases as he thinks proper, or particular classes of cases.

†† S. 35.
‡‡ S. 36, n. (a).
§§ Ss. 37, 41.
‖‖ S. 141.

Local Government may authorize Magistrate of District to distribute business by localities.

49. The Magistrate†† of the District, under the general or special orders of the Local Government,‡‡ may authorize any Magistrate subordinate§§ to him to entertain‖‖ complaints arising within certain local limits, and may, from time to time, vary such orders: Provided that no such Magistrate shall be authorized to entertain‖‖ any complaint of any offence which he is not competent¶¶ to try*** or to commit for trial.***

¶¶ Schd. IV & Ss. 21, 143.
*** S. 4.

This section provides for what has hitherto been done in the N. W. P. by Magistrate's rubekari. A Magistrate, however, authorized under this section is not a Division Magistrate, nor can he take up any case without complaint, or any case the venue of which lies beyond the local limits entrusted to him, unless especially authorized under ss. 28, 25, 23. (Agra S. N. A., 20, 1863.)

To find the proper Court competent to try any offence, see col. 7, Schedule IV.; or if it be an offence under a special or local law, *vide* the particular law in question, and note under s. 8, also Schedule of local and special laws attached to Schedule IV.

MAGISTRATES' BENCHES.

Power to invest Magistrates sitting as a bench with certain powers.

50. The Local Government* may direct any two or more Magistrates to sit together as a bench, and may invest such bench with the powers of a Magistrate of the 1st† 2nd‡ or 3rd§ class, and direct it to try‖ such cases or such classes of cases only and within such limits as it thinks fit.

* S. 36, n. (*a*)

† Ss. 20, 22, 24, 26, 27.

‡ Ss. 20, 22, 24, 25.

§ Ss. 20, 22, 23.

‖ S. 4.

Powers exercisable by such bench in absence of special directions.

51. In the absence of any special direction as to the powers of any such bench, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

Magistrate of the District may frame rules for guidance of benches.

52. The Magistrate¶ of the District may, subject to the general orders of the Local Government,** make rules for the guidance of Magistrates' benches in his district.

¶ S. 35.

** S. 36, n. (*a*).

Such rules (*a*) shall not be inconsistent with the provisions of this Act and may deal with the following subjects :—

The classes of cases to be tried.††

†† S. 4.

The times and places of sitting.

The constitution of the bench for conducting trials.††

The mode of settling differences of opinion which may arise between the Magistrates in Session.

(*a*). See App. "Rules for Magistrates' Benches."

CH. IV.
ss. 53—56.

* S. 35.

Magistrate of District may vary or annul rules made under section 52.

53. The Magistrate* of the District may, subject to the like orders, vary or annul, from time to time, any rules made by himself or by his predecessor under the last preceding section.

CONTINUANCE AND ALTERATION OF POWERS.

† S. 36, n. (a).

Powers may be varied or cancelled.

54. The Local Government† may vary or cancel any powers with which any person may have been invested under this Act or any enactment hereby repealed.

This power delegated by Governor-General in Council to Chief Commissioner, Central Provinces. (Order No. 2052 of August 1871.)

Powers of officer temporarily succeeding to vacancies in office of Magistrate of District.

55. When, in consequence of the office of a Magistrate of the District becoming vacant, any officer succeeds temporarily to the chief executive administration of the district in criminal matters, such officer shall, pending the orders of the Local‡ Government, exercise all the ordinary powers and perform all the duties of the Magistrate§ of the District.

‡ S. 36, n. (a).

§ Ss. 35, 21.

Continuance of powers of officers transferred.

56. Whenever any person holding an office in the service of Government, who has been invested with any powers, under this Act or any enactment hereby repealed, in any district, is transferred to an equal or higher office of the same nature within another district, he shall, unless the Local Government‖ otherwise directs, continue to exercise the same powers in the district to which he is so transferred.

‖ S. 36, n. (a).

Powers which depend for their existence upon localities will not be capable of being transferred under this section.

CHAPTER V.—ss. 57—62.

Of Public Prosecutors.

"Having provided for the Judges and Magistrates, we pass to the subject of public prosecutors. My own personal opinion is, that it would be desirable to separate, rather more clearly than they are separated at present, the functions of Magistrates and public prosecutors, and I should have liked to see the sections so drawn as to enable the public prosecutor to command the assistance of the Police in getting up a case for trial. The Committee were, however, of a different opinion, and considered that the public prosecutor ought to be merely an advocate for the prosecution. They are, of course, much more likely to be right than I am; but I hope that the sections as settled will at all events make it clear that a criminal trial in this country is not like a civil action; that the complainant is only a witness; and that if he does conduct the prosecution, he does so only by the permission of the Court. In passing from this subject I wish to repeat and to record my personal regret that the Bill does not provide more distinctly for it. The discussions upon it have made me aware of the fact, that a difference of opinion, which no doubt extends very deep, exists as to the position of District Magistrates. The extreme view on the one side is, that the Magistrate of the District should be a sort of king, who should govern his district from bottom to top and from beginning to end, hunting up criminals, trying and punishing them in minor cases, and handing them on for punishment to the Sessions Judge in other cases. The extreme view on the other side is, that the Magistrate should sit still and hear the witnesses brought before him by others; and this difference of opinion reflects itself in a manner which is obvious enough upon the question about public prosecutors."

His Honor the Lieutenant-Governor of Bengal expressed his entire and absolute concurrence in the opinion that the prosecution of a criminal in any serious case should not be looked upon in any degree as a suit between man and man, but should be treated as a public matter, and that whether there should be a prosecution or no prosecution, should be a subject for the consideration of a public servant appointed for the purpose.

The following extracts from Mr. Stephens' work on English Criminal Law are well worthy of attention. We trust we shall not need an apology either to the writer or to our readers for inserting them here. The errors Mr. Stephens warns public prosecutors against are, we fear, only too common among us.

"The general form of a criminal trial in England" and in India is well known. The first step is the prisoner's plea. The theory of pleading is exclusively litigious. It assumes that the trial is a question between the prisoner and the prosecutor. If the prisoner chooses to plead guilty, there is an end of the matter. No further inquiry takes place, no witnesses are called, and the jury is not required to return any verdict. They are not and cannot be sworn until the issue is joined on which they are to make deliverance. After the plea, the jury are sworn, subject to the prisoner's right of challenge, and after this the counsel for the prosecution either opens the case, or, if the prisoner is undefended, frequently calls his witnesses without opening it. The position of the counsel for the Crown in an English Court is very peculiar. The form of the proceedings gives him even greater

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power over the case than he would have in a civil action. He has absolute discretion,* subject to the rules of evidence, as to the witnesses to be called and the questions to be put to them. In many cases, he has the alternative of proceeding upon one or the other of several different charges.* For instance, he will often have to decide whether to ask for a verdict of murder, or for one of manslaughter; whether an assault should be treated as a wounding with intent to do grievous bodily harm, or as a mere unlawful wounding; and so of many other cases. Besides this, there are certain points upon which the Judge will almost always take his opinion. For instance, if the counsel for the Crown applies to have a prisoner admitted as king's evidence,* or if he says that he considers that it is advisable to offer no evidence on a particular charge, he is generally allowed to exercise his discretion upon the subject. In these and other important particulars, he is practically *dominus litis;* and he is so in a much more personal sense than can ever be the case in a civil action. In a civil action, he would be bound to consider himself the representative of his client, bound by his instructions; but, *in a criminal prosecution, no man of honour can ever consent to become the instrument of private vengeance.* He is performing a part which has been found, on the whole, a convenient, though it may appear a paradoxical, way of administering justice. But he is bound to keep in view the end as well as the means. Hence he ought to act as an advocate indeed, but as an advocate who has many of the duties and responsibilities of a Judge, and who contends not for the success of his cause at all events, but for the full recognition by the Judge and Jury of that side of the truth which makes in favor of it. *It is his duty to see that the case against the prisoner is brought out in all its strength; but it is not his duty to conceal or in any way diminish the importance of its weak points. His function is not to enquire into the truth, but to put forward, with all possible candour and temperance, that part of it which is unfavorable to the prisoner.*

Duties of Public Prosecutor.

After opening the case, the counsel for the Crown calls the witnesses, and examines them according to the rules of evidence—that is, he brings out by questions, which do not suggest the answers, the facts relevant to the issue to be tried which are within their personal knowledge. The prisoner, or his counsel, then cross-examines them; that is, he extracts from them, by questions which may suggest the answer in the strongest form, any facts favourable to his client which he supposes to be within their knowledge.

The distinction between examination-in-chief and cross-examination, as to leading questions, is most characteristic, and is, perhaps, the strongest illustration that can be given of the litigious character of English Criminal Law. It rests upon the assumption that the witness will be favorable to the side by which he is called, that there is a danger that he will say whatever is suggested to him by the one side, and conceal every thing that is not extorted from him by the other.

The examination of the witnesses for the Crown is followed by the defence of the prisoner, either in person or by his counsel, who acts throughout the part of an advocate simply, securing for his client every advantage that the facts or the law afford him. If the prisoner calls witnesses, they are examined and cross-examined in the same manner as the witnesses for the Crown, and the counsel for the Crown replies, otherwise not.

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* This is somewhat modified in India, see Ss. 351, (61, 445), 348.

The right of reply is given or withheld in strict accordance with the litigious theory. *Audi alteram partem* is the fundamental rule of all litigation. Both sides must be heard upon any matter which may be propounded. Hence if the Crown only calls witnesses, the prisoner's defence concludes the proceeding. If the prisoner adds new matter, the Crown has the right of being heard again.

It is desirable, as pointed out above, that the counsel for the Crown should consider himself as in many respects a judge, bound, not to convict at all events, but to see that the case against the prisoner is presented to the jury just as it is in all its strength and all its weakness; and that the counsel for the prisoner, though an advocate, and not a judge, should not forget his obligations to the public. Nothing is more likely to favor this frame of mind than the habit of alternately prosecuting and defending prisoners by which men learn practically what ways of conducting prosecutions and defences are, and are not, fair to the other side.

Duties of Public Prosecutor.

This theory is borne out in practice by the tacit rules which regulate the duties of the counsel. In practice, it is universally admitted that the prosecutor is *morally and professionally bound always to keep in sight the ultimate object*,—namely, *the discovery of truth*; whereas no such obligation is laid upon the prisoner and those who represent him, because it is too much to expect of human nature that they should discharge it, and it is better not to impose an obligation which is sure to be systematically violated. Both sides, on the other hand, are bound, in the strongest way, not to do anything to propagate falsehood. It is difficult to explain the practical effect of this sentiment on the judges and the counsel, but it has produced a number of professional rules not reduced to any express form, but well understood and constantly acted on, which, in practice, assign to the counsel for the Crown and for the prisoner definite duties; and which distinguish between honorable and dishonorable attack and defence as clearly as the laws of war distinguish between honorable and dishonorable warfare. A few of these rules may be mentioned in illustration.

The counsel for the Crown is bound not to suppress any fact within his knowledge favorable to the prisoner; suppose, for instance, a particular witness whose name appears on the depositions speaks to declarations or conduct which favor the supposition of innocence, the counsel for the Crown would be bound to call him, unless indeed he believed that his testimony was perjured, in which case he might leave the other side to call him, in order that he might cross-examine and reply upon him. On the other hand, the counsel for the prisoner is bound not to bring to light facts within his knowledge unfavorable to the prisoner, as for instance by calling witnesses to prove an irrelevant *alibi*. A man was indicted for a rape. The only question was as to his identity. He had a witness to prove what he supposed to be an *alibi*. His evidence really proved that the prisoner was a mile off the place a quarter of an hour before the crime was committed. The counsel for the prisoner did not call this witness, though he would have contributed greatly to the manifestation of the truth.

The counsel for the Crown may not use arguments to prove the guilt of the prisoner which he does not himself believe to be just, and he is bound to warn the jury of objections which may diminish the weight of his arguments. In short, as far as regards his own evidence, his speech should, as much as possible, resemble the summing up of the Judge. The counsel for the prisoner may use arguments which he does not believe to be just. It is the business of the jury, after hearing

the Judge, to say whether or not they are just. On the other hand, there are many obligations which affect each side equally. Neither is at liberty to attempt to brow-beat, or terrify, or confuse a witness, though they may expose any real confusion which exists in his mind, or test by the strictest cross-examination the honesty of his statements. Neither is at liberty wilfully to mis-understand a witness, or to mis-state in his address to the jury the effect of what he has said, either by distortion or suppression.

The neglect or observation of these and other rules of the same kind practically establishes a wide distinction, and one which, to a practised eye, is easily recognised between those who exercise a noble profession, and those who disgrace it. The distinction is all the more real because no system of rules can fully embody it. It must be a matter of sentiment and good feeling. The form of English Criminal Procedure places a very wide discretion in the hands of the counsel, and it depends entirely on the way in which they use it, whether their functions are a public duty, or a public nuisance.

Appointment of public prosecutor.

57. The Local Government may, if it thinks proper, appoint officers to be called public prosecutors.

The following rules have been laid down for the conduct of criminal prosecutions in the Presidency of Bengal:

Whenever a Magistrate shall be informed that any criminal case has been or is about to be transmitted to the High Court, in appeal or revision, or on reference, he shall at once communicate with the Legal Remembrancer, giving him a brief abstract of the case, and submitting his opinion as to whether or not there should be any appearance for the prosecution.

The Magistrate is bound to furnish the Legal Remembrancer with any information or explanations called for with reference to criminal cases pending before the High Court.

The Magistrate is empowered to employ the Government pleader or any other pleader of the Judge's Court, or any one of his own amlah, in the prosecution of criminal cases committed to the Sessions. The principle of selection should be thorough knowledge of the case by attendance on it from its preliminary proceedings to its committal, trustworthiness, knowledge of law and procedure, skill and practice in the conduct of cases, and leisure to attend the conduct of the case with reference to other avocations. The person selected should combine as many of the most important of the above qualifications as is possible.

Whoever may be the person appointed by the Magistrate to conduct the prosecution, he shall be entitled to a special fee. Such fee shall be regulated in amount by the time and labour bestowed on the case, by the issue of the case so far as it depended on the exertions of the prosecutor, and by a fee in proportion to his position and gains generally.

The Magistrate shall submit a bill of fees granted for the above purposes for the sanction and counter-signature of the Legal Remembrancer. The bill shall be in Form A, and the column of remarks shall state, in any particular case, whether the prosecutor has well or ill conducted it.

Whenever, in any criminal case, the prisoner himself, or some person on his behalf, shall apply to the Sessions Court to appeal to the High Court, or whenever the High Court shall send for any record in order

Public Prosecution in Bengal.

to an appeal or revision, or whenever the Sessions Court shall refer any criminal case to the High Court for decision, the Government pleader in the District Court shall at once give information to the Magistrate and to the Legal Remembrancer.

Whenever a Government pleader in the High Court shall receive notice that the record of any criminal case has been received in, or has been sent for, by the High Court, for the hearing of any reference, appeal, or revision of the same, he shall at once give notice to the Magistrate, requesting to be favoured with any special instructions for the conduct of the case, and shall communicate with the Government Advocate on any points that seem specially to require it.

In all criminal cases before the High Court, whether on appeal or on revision, or on reference, the Government Advocate has ordinarily a discretion to appear for the prosecution, either personally or by one of the pleaders subordinate to him.

Whenever in any such criminal cases the prisoners are represented by counsel, the Government Advocate shall appear for the prosecution, either in person or by one of the pleaders subordinate to him at his discretion.

Whenever the High Court may think it conducive to the better administration of justice, they may call upon the Government Advocate to prosecute in any case before them, and the Government Advocate shall thereupon appear in such case in person, or by one of the pleaders subordinate to him at his discretion.

The Government Advocate has a discretion to appear or not to appear in the prosecution of any criminal case before the High Court, and this notwithstanding any opinion adverse to that he has himself formed, that may have been expressed by the officer submitting the case to him.

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No. and date of Calendar.	Name of Parties.	Number of Defendants.	Crime.	Name and designation of Officer who conducted the prosecution at the Sessions.	Whether the prisoner confessed.	Number of witnesses for the prosecution examined at the Sessions.	Number of witnesses for the defence examined at the Sessions.	Number of days the case was in course of trial at the sessions Court.	Whether prisoner was acquitted or convicted by the Sessions Judge.	Amount of proposed remuneration.	REMARKS.

The following rules have been issued by the Government of the North-Western Provinces:

Appeals before the Sessions Courts.

1. Magistrates of Districts will be responsible for seeing that all appeals to the Sessions Courts are watched by a Joint or Assistant Magistrate, or by the Government vakeel.

2. Criminal appeals before the Court of Sessions are, under the orders of the High Court of Judicature, heard only upon certain fixed days. Lists of the cases coming on for hearing are daily affixed in a conspicuous part of the Court-house, and are regularly corrected.

3. The responsibility of informing the Magistrate of the District of the publication of a notice of appeal in the lists above mentioned rests with the Government pleader.

4. The Magistrate, on receiving notice of the admission of an appeal, will decide whether the Joint or Assistant Magistrate or Government pleader will place himself under his directions, and will afford him all needful assistance in the conduct of the case.

5. Government pleaders will obtain a copy of the petition of appeal, and make it over to the officer appointed to appear, who will communicate with and request any special instructions from the Magistrate by whom the appellant has been convicted and punished.

Appeals and other Criminal Cases before the High Court.

1. Whenever the Sessions Court shall refer any criminal case to the High Court as a Court of Reference, the Government pleader in the District Court shall at once give information to the Magistrate, who will, if necessary, communicate with the Government Advocate at Allahabad.

2. When the record of any criminal case has been called for by the High Court as a Court of Appeal or Revision, the Government pleader in the High Court shall give immediate notice to the Magistrate of the District in which conviction was obtained, requesting to be furnished with any special instructions for the conduct of the case, and sending a copy of the petition of appeal or application for a revision (when the record is called for on such application). On any points which seem specially to require it, the Government pleader will take the advice of the Government Advocate.

3. It is optional with the Government Advocate (except when specially instructed by competent authority) to appear in any case of appeal, reference, or revision before the High Court, but the Government pleader will be bound to appear in all cases in which he may be required to appear by the Magistrate of the District in which the conviction was obtained, or by the Government Advocate, or when in his own opinion his appearance may be necessary or expedient.

Trials before the Sessions Court.

In the North-Western Provinces, the following Circulars have been issued on this subject, *viz.*:—142 of 1854, 7 of 1860, 8 of 1862, 21 of 1862, 40 of 1862, 28 of 1863, and 26 of 1865. By them Magistrates are to avail themselves of the Government Pleader at all sessions trials, whenever it may seem desirable in the interests of the prosecution to do so. They are never to give especial remuneration to them in any case, unless it be one of peculiar difficulty and labour.

In N. W. P.

In Government Order No. 1728A, dated 31st December 1870, the Lieutenant-Governor of the North-Western Provinces empowers all Joint Magistrates and all Assistant Magistrates of the first class to appear and prosecute on behalf of Government in criminal trials before the District Sessions Judges of the North-Western Provinces.

His Honor's intention is not that an Assistant Magistrate should be deputed in every case, but only in cases of importance, such as involve difficult legal points, or on which serious results depend, or in which an English Barrister or pleader is retained on the other side.

The High Court, North-Western Provinces, in C. O. 1, 1870, directs that counsel and pleaders may address the Court in English, either with the consent of the Court and both parties or without their consent where due provision is made by the English-speaking counsel or pleader for interpreting what he says into the language of the Court.

In Oudh.

The Government Advocate, North-Western Provinces, has been appointed by the Oudh Administration to conduct the prosecution of European British subject committed for trial before the High Court of Judicature at Allahabad. All Justices of Peace, when they make such a commitment, should at once send a copy of their record, including copies of all exhibits, to the Government Advocate. As the attendance of all witnesses at the time and place fixed for trial is essentially necessary, they should be instructed to accompany the Police Officer in charge of the prisoner, and that officer should be instructed to keep himself informed of the place of sojourn of each witness after the party arrives at Allahabad, and to see that they have timely information as to when their attendance in Court will be required.

On the duties of the Police as Public Prosecutors, see Ss. 189, 190, n.

Appointment may be for particular case or generally.

58. Public prosecutors may be appointed either for a particular case, or for particular classes of cases, or for all cases throughout the whole or any part of any province.

Private persons may not act as prosecutors or employ counsel without permission of the Court.

59. Any Court inquiring* into or trying* any case may permit any person to conduct the case as prosecutor; but no person shall be entitled to do so without such permission. Any person permitted to prosecute may conduct the prosecution personally or by counsel. * S. 4.

See note to s. 57.

He may plead in all Courts in cases under his charge.

Barristers, &c., privately instructed to be under his direction.

60. The public prosecutor may appear and plead without any written authority before all Courts in which any case under his charge is under inquiry,† trial,† or appeal; and if any private person in- † S. 4.

CH. V. ss. 61, 62.

structs any barrister, attorney, pleader, or vakil to prosecute any person in any case under the charge of the public prosecutor, the public prosecutor shall have the management of the case, and such other person shall act under his directions.

Effect of withdrawal of charge by public prosecutor.

61. The public prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge; and upon such withdrawal, if it is made whilst the case is under inquiry,* the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted.

* S. 4.

Notice to public prosecutor of appeal in cases prosecuted by him.

62. If an appeal is brought in any case in which any person, prosecuted by the public prosecutor, has been convicted, notice of such appeal and a copy of the grounds of appeal shall be given to such public prosecutor by the Appellate Court, and the Court shall also give him due notice of the time and place at which such appeal is to be heard.

See notes to s. 57.

Notes by Select Committee on Chapter VI.

We have provided that the High Court may transfer any case from one subordinate Court to another, or may itself dispose of it, following the procedure of the Court from which the case was transferred.

CHAPTER VI.—Ss. 63—70.

THE PLACE OF INQUIRY AND TRIAL.

"We deal next with what an English lawyer would call the law of venue—the law as to the place where a trial should be held. The existing Act copies the English law on this subject, and, in particular, reproduces the bald exceptions to a vague rule which are characteristic of it. We have attempted in this chapter to state the principles on which these exceptions depend, and have turned the exceptions them-

selves into illustrations. We have also inserted a provision which, unless I am much mistaken, will effectually prevent the undergrowth of cases upon this matter, which has disfigured English law. We propose that, unless it appear that actual injustice resulted from holding the trial in a wrong place, no effect at all shall follow from it."

Place for inquiry and trial of offence.

63. Every offence shall be inquired* into, and, if tried* by a Magistrate, shall be tried* in the district in which it was committed. If tried* by a Court of Session it shall be tried* by that Court of Session to which the Magistrate commits. * S. 4.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division, in which the district to which they are appointed is situated; but the Local Government may direct that any cases or class of cases committed in any district may be tried* in any Sessions Division.

EXPLANATION.—Offences created by local and special laws may be inquired into and tried in any place where the inquiry or trial might be held under the provisions of those laws or of this Code.

When an European British subject ought, in the opinion of the Magistrate, to be committed to a Court of Session (s. 75), and the Sessions Judge to whom such Magistrate ordinarily commits is not an European British subject, the case is to be referred to the High Court for orders. (S. 77.)

High Court may transfer case or direct trial in district other than that in which offence was committed.

64. Whenever it appears to the High Court that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses, it may direct the transfer of any particular criminal case, or appeal, or class of cases or appeals from a Criminal† Court, subordinate to its authority, to any other such Criminal† Court of equal or superior jurisdiction, † S. 4.

or may order that any offence shall be inquired† into or tried† in any district or division of a district, other than that in which the offence has been

CH. VI. ss. 64, 65.

committed, or that it shall be tried* before itself. If the High Court withdraws any case from any other Court for trial* before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn.

* S. 4.

Provided that the orders issued under this section shall not be repugnant to orders issued by the Local Government under the last preceding section.

The High Court, Calcutta (II, S. W. R., 58, Kishto Chunder), will not use this power unless there are sufficient reasons to believe that the trial will not be fairly held; so also Madras. (*Ex-parte* Narasimpulu Pantulee, 1 Mad. Jur., 58.)

Accused triable in district where act is done, or where consequence ensues.

65. When a person is accused of the commission of any offence by reason of anything which has been done, or of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be inquired† into or tried† in any district in which any such thing has been done, or omitted to be done, or any such consequence has ensued.

† S. 4.

Illustrations.

(*a.*) A is wounded in the district of X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(*b.*) A is wounded in the district of X and is, during twenty days, unable to follow his ordinary pursuits in the district Y, where he is being treated. The offence of causing grievous hurt to A may be inquired into and tried either in X or Y.

(*c.*) A is put in fear of injury in district X, and is thereby induced, in the district of Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in district X or district Y.

The Agra High Court (C. O., 21, 1864) and the Chief Commissioner, Panj. (Cir., 1864) have pointed out that in this and the following subject it is the convenience of the parties and witnesses to a case that has to be considered. The Magistrates to whom the complainant originally applies should commence and proceed with the inquiry unless he find in the course of it that it can be more conveniently tried in another District.

If he does so find, he should then place himself in communication with the Magistrate of that District, recommending the transfer of the case.

Should the Magistrate communicated with concur, the proceedings and accused should be forwarded to him, and the prosecutor and witnesses directed to go his Court. Should he, however, dissent, the first Magistrate must proceed with the enquiry or refer the question of venue to the consideration of the High Court.

The Agra High Court (Mt. Jowahir, S. N. A., Agra, 1866, 43; Begum, 1866, 131) has ruled that the term "anything which has been done" means some act constituting the offence or part of it, and the term "any consequence which has ensued" means some consequence completing or modifying that act,—*e. g.*, A buys at Mirzapore a minor with intent to use her for purpose of prostitution, and takes the minor to Benares, where A is tried by the Session Court. The plea of want of jurisdiction is raised and overruled by the reply that possession at Benares was a consequence of the offence. This was overruled by the Sudder Court, who maintained that the offence under s. 373, Penal Code, had been completed at Mirzapore.

The same Court (Bukteawur, 1865, 85) held that prisoner had been prejudiced, because the offence (under s. 406, Penal Code), had not been tried in the District where it took place.

S. 31, Act XVIII, 1862, gives similar jurisdiction to High Courts in their original criminal jurisdiction.

Place for trial where act is offence by reason of relation to other offence.

66. When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be inquired* into and tried* * S. 4. either in the district in which it happened or in the district in which the offence, with which it was so connected, happened.

Illustrations.

(*a.*) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(*b.*) A charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(*c.*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing, or in the district in which the kidnapping, took place.

(*d.*) A, B. C and others combine together to abet the waging of war against the Queen. Any of the conspirators may be tried in any district in which acts were done by any one of the persons with whom

CH. VI. s. 67.

he or they conspired in pursuance of the original concerted plan and with reference to the common object.

See note on s. 65.

See s. 33, Act XVIII of 1862, for similar jurisdiction conferred on High Courts in the exercise of their original criminal jurisdiction.

The Calcutta High Court (Gausoo Khan, S. W. R., V, C. R., 49) have ruled that, in order to punish, in district X, receivers of stolen property, who received such property in district Y, it would be necessary to prove that the property had become stolen property in the first district, *viz.*, district X.

The Bombay High Court (Bechar Mada, IV, Cr. Ca., 38) rule that this section gives no jurisdiction where the offence of receiving stolen property had been committed without British territory.

Place for inquiry of trial where scene of offence is uncertain;

67. When it is uncertain in which of several districts an offence was committed; or

or not in one district only,

where an offence is committed partly in one district and partly in another; or

or offence is continuing,

where the offence is a continuing one and continues to be committed in more districts than one; or

or consists of several acts.

where it consists of several acts done in different districts,

* S. 4.

it may be inquired* into and tried* in any one of any of such districts.

Illustrations.

(*a.*) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing in respect of which, the offence was committed passed in the course of that journey or voyage.

(*b.*) An offence committed near the boundary between two districts may be inquired into and tried in either.

(*c.*) A charge of being a thug or of having belonged to a gang of dacoits may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*d.*) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*e.*) A charge of criminal misappropriation or of criminal breach of trust may be inquired into and tried either in the district in which

the property, which is the subject of the offence, was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

(*f*.) A steals a buffalo from B in district W, and personally or by his agents conveys the buffalo through districts X and Y into district Z. This is a continuing offence, and A may be tried either in W, X, Y, or Z.

For similar powers conferred on the High Courts in their original criminal jurisdiction, see ss. 34, 35, 36, Act XVIII of 1862.

Murder as a thug, dacoity or dacoity with murder.

68. The offence of murder as a thug, dacoity or dacoity with murder may be inquired* into and tried* wherever the person accused may happen to be when arrested, or in any other district in which he might be tried under any other provision of this Code, or any other law relating to the trial of such offence. * S. 4.

S. 310 provides the punishment for being a thug, but there is no special section in the Penal Code punishing murder as a thug.

The other offences are to be found in ss. 391, 395, 396, Penal Code.

High Court to decide, in case of doubt, district where inquiry shall take place.

69. Whenever any doubt arises as to the district in which any offence should be inquired† into or tried,† the High Court, within whose jurisdiction the offender is apprehended, may decide in which district the offence shall be inquired† into or tried.† † S. 4.

Effect, on sentence, of holding investigation, inquiry or trial in wrong district.

70. No sentence or order of any Criminal‡ Court shall be liable to be set aside merely on the ground that the investigation,‡ inquiry‡ or trial‡ was held in a wrong district or Sessions division, unless it is proved or appears that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error, in either of which cases a new trial‡ may be ordered. ‡ S. 4.

The object of the section is to prevent trials being improperly set aside on account of irregularities not involving a failure of justice, not to grant license to Magistrates to do what they are not authorized to do. See ss. 32, 33.

Notes by Select Committee on Chapter VII.

With regard to European British subjects, we recommend (*a*) that a Magistrate of the first class, who is a European British subject and a Justice of the Peace, shall have power to try European British subjects for offences of the class usually tried by Magistrates, and, on conviction, to pass any sentence warranted by law, not exceeding three months' imprisonment and one thousand rupees fine. (*b*). That a Sessions Judge, who is a European British subject, may try European British subjects for offences which are not punishable with death or transportation for life, and which can, in his opinion, be adequately punished with a sentence of one year's imprisonment and fine. In case the Sessions Judge considers that such punishments are inadequate, he will transfer the case for disposal to the High Court.

We maintain the proposal that any European British subject may apply to a High Court for an order to bring the applicant before it and to examine the legality of his imprisonment; and we have empowered the High Court to make the necessary inquiries, by affidavit or otherwise, either before or after the issue of such an order, with a view to ascertaining the state of the case.

We consider such an order preferable to the common law writ of *Habeas Corpus* on account of the intricacies of procedure connected with the issue of and returns to that writ.

We propose, accordingly, that no writs of *Habeas Corpus* or Mainprise shall be issued beyond the Presidency towns. Whether, as the law now stands, they can be issued, may be regarded as a moot point; but we think the existence of such a power would be unsuited to this country. The provisions of the Penal Code on "Wrongful Restraint" appear to us to be quite sufficient protection for personal liberty in all common cases.

We have cleared up the doubt which has hitherto existed as to whether all portions of the Code apply to European British subjects, by providing that, except in respect of the special privileges above described, and in respect of orders under chapter thirty-seven to give security in cases of bad livelihood, the Criminal Procedure Code shall be applicable to all persons alike.*

CHAPTER VII.—Ss. 71—88.

Of Criminal Jurisdiction over European British Subjects.

"European British Subjects."

71. The expression "European British subjects" means in this Act—

(1.) All subjects of Her Majesty, born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2.) The children and grandchildren of any such person by legitimate descent.

See however S. 274.—Ed.

The subjects of Her Majesty are either aliens or natural born subjects. Natural born subjects are those born within the dominions of the Crown of England,—that is, within the allegiance of the Queen. Aliens are such as are born out of it. Allegiance may be either natural and perpetual or local and temporary. Natural allegiance is such as is due from all men born within the sovereign's dominions immediately on their birth. For then, and also during their infancy, when incapable of protecting themselves, they are under the protection of the Crown. Natural allegiance is, therefore, a debt of gratitude which cannot be forfeited, cancelled, or altered by any change of time, place, or circumstance, nor by any thing but the united concurrence of the legislature. An Englishman who removes to France or to China owes the same allegiance to the Queen when there as he did at home, and twenty years hence as well as now. For it is a principle of universal law that the natural born subject of one prince cannot, by any act of his own, not even by swearing allegiance to another, put off his natural allegiance to the former, for natural allegiance is intrinsic, primitive, and antecedent to any other allegiance, and cannot be divested without the concurrence of that prince to whom it was first due. Local allegiance is such as is due from an alien or stranger born for so long a time as he continues within the Queen's dominion and protection, and ceases the instant he transfers himself from the Queen's dominion to another. All children born out of the Queen's legiance whose fathers (or grandfathers by the fathers' side) were natural born subjects are now deemed to be natural born subjects themselves to all intents and purposes, unless their said ancestors were attainted or banished beyond sea for high treason, or were at the birth of such children in the service of a prince at enmity with Great Britain. (Blackstone's Commentaries.)

Subjects born.

The children of aliens born in Her Majesty's dominions are, generally speaking, natural born subjects, and entitled to all the privileges of such.

Naturalization and Resumption of British Nationality.

Certificate of Naturalization.

An alien who, within such limited time before making the application hereinafter mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order, or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization.

Naturalized.

The applicant shall adduce, in support of his application, such evidence of his residence or service, and intention to reside or serve, as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision; but such certificate shall not take effect until the applicant has taken the oath of allegiance.

CH. VII. S. 71.

An alien to whom a certificate of naturalization is granted shall, in the United Kingdom, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the Foreign State of which he was a subject previous to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said Secretary of State may, in the manner aforesaid, grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such especial certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

Certificate of re-admission to British nationality.

A natural born British subject, who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate hereinafter referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said Secretary of State shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall, in like manner, be required previously to the issuing of the certificate.

A statutory alien, to whom a certificate of re-admission to British nationality has been granted, shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject, with this qualification, that, within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject, unless he has ceased to be a subject of that Foreign State according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British Possession, may be exercised by the Governor of such Possession; and residence in such Possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

National status of married women and infant children.

The following enactments shall be made with respect to the national status of women and children:

1. A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject.

2. A widow being a natural born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during widowhood, obtain a certificate of re-admission to British nationality in manner provided by this Act.

3. Where the father being a British subject or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother, who, during infancy, has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the State of which the father or mother has become a subject, and not a British subject.

4. When the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who, during infancy, has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents.

5. Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who, during infancy, has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

Power of naturalized aliens to divest themselves of their status in certain cases.

Where Her Majesty has entered into a convention with any Foreign State to the effect that the subjects or citizens of that State who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by order in Council, to declare that such convention has been entered into by Her Majesty; and from and after the date of such order in Council, any person being originally a subject or citizen of the State referred to in such order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration, such person shall be regarded as an alien and as a subject of the State to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows: that is to say, if the declarant be in the United Kingdom, in the presence of any Justice of the Peace; if elsewhere in Her Majesty's dominions, in the presence of any Judge of any Court of civil or criminal jurisdiction, of any Justice of the Peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

Any person a natural born subject of Her Majesty's, but who at the time of birth became, under the law of any Foreign State, a subject of such State, and is still such subject, may, if of full age, and not under any disability, make a declaration of alienage; and after the making such declaration shall cease to be a British subject. Any person born out of Her Majesty's dominions of a father being a British subject, may, if of full age, and not under any disability, make a declaration of alienage, and after the making such declaration shall cease to be a British subject.

Any British subject who has at any time before, or may at any time after, the passing of this Act, August 1870, when in any Foreign State and not under any disability, voluntarily become naturalized in such State, shall, after the time of his having become naturalized in any such

CH. VII. s. 71.

Foreign State, be deemed to have ceased to be a British subject, and regarded as an alien; Provided—

"1. That where any British subject has, before the passing of this Act, voluntarily become naturalized in a Foreign State, and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act,* make a declaration that he is desirous of remaining a British subject, and upon such declaration taking the oath of allegiance, the declarant shall be deemed to be, and to have been, continually a British subject, with this qualification, that he shall not, when within the limits of the Foreign State in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof or in pursuance of a treaty to that effect.

"2. A declaration of British nationality may be made, and the oath of allegiance be taken, if the declarant be in the United Kingdom, in the presence of a Justice of the Peace; if elsewhere in Her Majesty's dominions, in the presence of any Judge of any Court of civil or criminal jurisdiction, of any Justice of the Peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty."

Declaration of Alienage by a person born within British dominions.

I, A. B., of ———, being held by the common law of Great Britain to be a natural born subject of Her Britannic Majesty by reason of my having been born within Her Majesty's dominions, and being also held by the law of C. D. to have been at my birth, and to be still, a subject (or citizen) of C. D., hereby renounce my nationality as a British subject, and declare that it is my desire to be considered and treated as a subject (or citizen) of C. D.

(Signed) A. B.

Made and subscribed this day of 18 before me.

(Signed) E. F.,
Justice of the Peace.
("Or other official title.")

Declaration of Alienage by a person who is by origin a British subject.

I, A. B., of ———, having been born out of Her Britannic Majesty's dominions, of a father being a British subject, do hereby renounce my nationality as a British subject.

(Signed) A. B.

Made and subscribed this day of 18 before me.

(Signed) G. H.,
Justice of the Peace.
("Or other official title.")

The oath referred to in the Act as the oath of allegiance is as follows:—

"I, ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and assignees according to law: So help me God."

* That is, before the 12th of May 1872.

The oath or declaration is to be made in triplicate,—one copy to be delivered to the declarant and the other two to be transmitted to the Government of India in the Foreign Department, whereof one will be retained, and the other will be forwarded to Her Majesty's Government in England for registration in the Home Office.

Regulations as to evidence.

The following regulations shall be made with respect to evidence under this Act:

1. Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned.

2. A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof, certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate.

3. A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof, certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate.

4. Entries in any register authorized to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this Act or by any Regulation of the said Secretary of State authorized to be inserted in the register.

Saving of allegiance prior to expatriation.

Where any British subject has, in pursuance of this Act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

Power of Colonies to legislate with respect to naturalization.

All laws, statutes and ordinances which may be duly made by the legislature of any British Possession for imparting to any person the privileges, or any of the privileges, of naturalization to be enjoyed by such person within the limits of such Possession, shall, within such limits, have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that Possession.

With the foregoing should be read 33 & 34 Vict., Cap. 102.

Penalty on making false declaration.

Any person wilfully and corruptly making or subscribing any declaration under the Naturalization Act, 1870, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor, and be liable to imprisonment with or without hard labor for any term not exceeding twelve months.

CH. VII. s. 72.

Domiciled.

Domicile is the place where a man has his home, and a domicile once acquired remains until finally abandoned and a new one gained. To constitute a new domicile, there must be not only the *factum* of residence in a place but the *animus manendi*. For further information on this question we would refer our readers to Petersdroff's Present State and Practice of the Common and Statute Law.

The European Vagrancy Act in s. 30 lays down that *all vagrants convicted* under its ss. 22 or 23 shall, *so long as they remain in India, be subject to the provisions of this Code* (other than those contained in Chap. XXXVIII) applicable to *Europeans not being British subject.* (Act XXI, 1869, s. 30).

Officers who may inquire into and try offences committed by European British subjects.

* S. 4.

† S. 71.

72. No Magistrate, or Justice of the Peace, or Sessions Judge shall have jurisdiction to inquire* into a complaint or try* a charge against a European† British subject unless he is himself a European† British subject.

‡ Ss. 20, 22, 24, 26 & 27.

No Magistrate shall have such jurisdiction unless he is a Magistrate‡ of the first class and a Justice of the Peace.

No Justice of the Peace shall have such jurisdiction unless he is a Magistrate‡ of the first class.

Two classes of Justices of Peace.

There are two classes of Justices of the Peace in India: (1) those empowered to act as such by virtue of their office; and (2) those appointed to be Justice of the Peace by Commissions.

Statute Justice of Peace.

Under the first class come the several Governors and Councils at Calcutta, Madras, and Bombay; the Governor-General and Council at Fort William, and all Judges of the several High Courts situate at Calcutta, Madras, and Bombay.

Justices of Peace by Commission.

Justices of the Peace who come under the second class are appointed for *Calcutta* by the Governor-General in Council or the Local Government.

Madras, by the Local Government.

Bombay, ditto ditto.

The rest of British India, by the Governor-General in Council or by the Local Government, so far as regards the territory subject to their Government or Administration.

Who are eligible?

For Calcutta, Madras, and Bombay any persons resident within British India, and not being the subject of any Foreign State, are eligible; elsewhere, Covenanted Civil Servants of the Crown or other inhabitants.

Notification of Appointment.

The appointment, in both cases, is to be notified in the Official Gazette.

Powers of Justices of Peace.

Justices of Peace appointed for Calcutta, Madras, or Bombay have power to do all acts which appertain to their office within the limits of the said Town only, but Justices of Peace appointed elsewhere have

similar power, which may be exercised anywhere within the territories subject to the Local Government which appointed them.

In Native State.

All servants of Government appointed to be Justices of Peace, either for the whole of British India or for the territories subject to a Local Government, have power, as regards European British and Christian subjects of Her Majesty in Native States, to act as Justices of Peace.

Declarations of Justices of Peace.

Before acting as a Justice of Peace, every Justice of Peace *must* make and subscribe before some other Justice of Peace or Chief Civil Officer of any station within the territories or place in and for which he shall have been appointed, the following declaration:—

"I declare that I will be faithful and bear true allegiance to Her Majesty."

"I declare that I will truly and faithfully discharge the office of a Justice of the Peace."

Where kept.

These subscriptions and declarations are to be kept by such officer as the Governor-General in Council or the Local Government (as the case may be) shall, from time to time, appoint. In Lower Bengal, this is the Secretary to Bengal Government, G. O. of 1869.

Suspension or dismissal of Justices of Peace.

All Justices of Peace may be suspended or dismissed by the same Power that appointed them. (Act II of 1869.)

Justices of the Peace not being Magistrates of the first class, and Magistrates not Justices of Peace, have all powers other than those relating to inquiry and trial belonging to them by virtue of their office over European British subjects.

Who may hear complaints and issue process.

73. Any Magistrate who is authorised by law to entertain complaints, may entertain against European* British subjects such complaints as he is authorised to entertain in the case of other persons.

* S. 71.

If he issues any process† for the purpose of compelling the appearance of a European* British subject accused of an offence, such process must be returnable before a Magistrate‡ competent to inquire§ into or try§ the case.

† S. 139 *et seq.*
‡ S. 141.
§ S. 4.

Magistrates of the first class being European British subjects, and Justices of the Peace, may inquire into complaints against European British subjects.

74. Any competent‖ Magistrate may inquire¶ into complaints of any offence made against a European** British subject.

‖ S. 72.
¶ S. 4.
** S. 71.

When such Magistrate may try, and extent of his jurisdiction.

If the offence complained of is a Magistrate's¶ case, and can, in the opinion of such Magistrate, be adequately punished by him, he shall proceed as is

hereinafter in this Code directed, according to the nature of the offence, and on conviction, may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

It would appear from the wording of s. 20, as compared with the wording of this section, that no combined sentence, save that of imprisonment and fine, can be passed under this section.

When commitment is to be to Court of Session.

75. When the offence complained of cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused person ought to be committed, commit him to the Court of Session.

When commitment is to be to High Court.

When the offence complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

Jurisdiction of Court of Session.

76. Sessions Judges or Additional Sessions Judges, and, when specially empowered in that behalf by the Local Government, Assistant Sessions Judges who are European* British subjects and who have been Assistant Sessions Judges for not less than three years, may pass on European* British subjects any sentence, warranted by law, not exceeding one year's imprisonment, or fine, or both.

* S. 71.

When Sessions Judge finds his powers inadequate.

If at any stage of the proceedings, the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magistrate to bind† over, the complainant and witnesses to appear before such High Court.

† S. 360.

No power of whipping European British subjects is conferred upon the Courts of Session.

Procedure when Sessions Judge is not a European British subject.

77. If the Sessions Judge of the Sessions Division, within which the offence is ordinarily triable* is not a European† British subject, the case shall be reported, by the committing Magistrate, for the orders of the High Court.

* S. 73.
† S. 71.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division in which the District to which they are appointed is situate. (S. 63.)

Mode of conducting trials by Court of Session.

78. Trials of European‡ British subjects before the Court of Session shall be conducted according to the provisions of Chapter XIX.

‡ S. 71.

In trials with assessors not less than half the number of assessors, and in trials by jury not less than half the number of jurors, shall be European‡ British subjects.

Appeal from conviction of such subject by Magistrate.

79. Any European§ British subject who is convicted by a competent‖ Magistrate of any offence, may¶ appeal either to the Court of Session or to the High Court.

§ S. 71.
‖ S. 72.
¶ S. 269.

Appeal from conviction by Court of Session.

80. Any European** British subject who is convicted of any offence by any Court of Session, may†† appeal to the High Court.

** S. 71.
†† S. 271.

Right of European British subject under detention to apply for order to produce his person.

81. Any European‡‡ British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court, which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the said High

‡‡ S. 71.

Court to abide such further order as may be made by it. The High Court, if it thinks fit, may, before issuing such order, inquire on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit after such inquiry as it thinks necessary.

Procedure on such application.

The High Courts may issue such orders throughout the territories over which they have jurisdiction and over such other places as the Governor General in Council may direct.

"I may just notice the provisions of ss. 81 and 82 on the subject of the writ of *habeas corpus*. The matter is at present in the greatest confusion, as any one may see for himself by reading the arguments on the subject which took place in the case of the Wahábi convict Amir Khán. I will not detain the Council with a legal argument; but I think it is exceedingly doubtful whether the writ of *habeas corpus* would issue, as matters now stand, to bring up a European unlawfully detained in custody in the Mofussil, and I think it pretty clear that it would not lie to bring up a Native unlawfully detained by a Native in the Mofussil. Into the minor ramifications of the subject, I need not enter. The sections in the Bill make the matter clear. An order equivalent to a writ of *habeas corpus ad subjiciendum* may be issued in respect of European British subjects throughout the whole of India. The writ of *habeas corpus* itself will continue to be issued, as at present, in the Presidency towns, but nowhere else.

"It must not be supposed that personal liberty is at all unprotected in the Mofussil. Wrongful restraint (which is very widely defined) is an offence against the Penal Code. And a person subjected to wrongful restraint can always procure his release by presenting a petition to any Magistrate for a summons or warrant against the person who wrongfully restrains him and by procuring himself to be summoned as a witness." (!)

82. Neither the High Courts nor any Judge of such High Courts shall issue any writ of *habeas corpus*, mainprise, *de homine replegiando*, nor any other writ of the like nature beyond the Presidency towns.

Power of High Courts as to issue of writs.

By 16 Car. I., C. 10, if any person be restrained of his liberty by order or decree of any legal Court, or by command of the King's Majesty

in person, or by warrant of the Council Board, or of any of the Privy Council, he shall, upon demand of his counsel, have a writ of *habeas corpus* to bring his body before the Court of King's Bench or Common Pleas, who shall determine whether the cause of his commitment be just, and thereupon do as to justice shall appertain. And by 31 Car. II., C. 2, commonly called the *Habeas Corpus* Act, the methods of obtaining this writ are so plainly pointed out and enforced, that so long as this Statute remains unimpeachable, no subject of England can be long detained in prison, except in those cases in which the law requires and justifies such detainer.

The writ of mainprize, manucaptio, is a writ directed to the sheriff (either generally, when any man is imprisoned for a bailable offence, and bail has been refused; or specially, when the offence or cause of commitment is not properly bailable), commanding him to take sureties for the prisoner's appearance, usually called mainpernors, and to set him at large.

The writ *de homine replegiando* lies to replevy a man out of prison, or out of custody of any private person (in the same manner that chattels taken in distress may be replevied), upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. But this writ is guarded with so many exceptions, that it is not an effectual remedy in numerous instances, especially where the Crown is concerned. The incapacity therefore of these three remedies to give complete relief in every case "had upwards of two centuries ago" almost entirely antiquated them; and caused a general recourse to be had in behalf of persons aggrieved by illegal imprisonment to the writ of *habeas corpus*, the most celebrated writ in the English law.

Procedure on claim of European British subject to be dealt with as such.

83. When any person claims to be dealt with as a European* British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry† or trial;† and such Magistrate shall on such statement decide whether he is or is not a European* British subject, and shall deal with him accordingly; and if any such person is dissatisfied with such decision, the burden of proving that it was wrong shall be upon him. If the Magistrate decide that the accused person is not a European* British subject, the trial† shall proceed, but such decision shall form a ground of appeal.

* S. 71.

† S. 4.

This section opens up the difficult question as to what grounds can be considered sufficient to prove a man to be an European British subject? In R. *v.* Foy, the Calcutta High Court (Taylor and Bell's Rep., Cal., p. 291) acceded that if a prisoner plead he is an European British subject, and give proofs or produce documents which, although not amounting to full legal proof of his status, satisfy the Court that

he is really an European British subject, the Magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence (deal with him as such), take up the case as a Justice of Peace, &c.

The same Court again, in their Circular No. 5, 1864, considered that proof consisted in the evidence of a credible person who knows the accused or his place of birth, or has heard him say of what country he is.

The Court should always, if a man desires to prove that he is an European British subject, give him all reasonable time to prove his assertion.

* S. 71.

Failure to plead status a waiver.

† S. 4.

84. If a European* British subject does not claim to be dealt with as such before the Magistrate, before whom he is tried† or committed, he shall be held to have waived his privilege as such European British subject.

If the Magistrate has reason to believe that any person brought before him is a European British subject, it is his duty to ask him whether he is one or not.

Many such instances may occur. As for instance the charge may state that the offence was committed by a European soldier in one of Her Majesty's European regiments, or the evidence may show that the prisoner was born in England, or was a European in the service of a British subject, or held a situation showing plainly that he was a European British subject.

‡ S. 71.

Trial of person not a European British subject under this chapter.

85. If a person who is not a European‡ British subject, is dealt with as such and does not object, the proceedings shall be valid.

§ S. 71.

|| S. 1.

Procedure of High Courts.

86. All High Courts shall deal with proceedings against European§ British subjects outside of the Presidency|| towns in the manner in which they are empowered by this Act or by any other law in force for the time being to deal with the proceedings of Magistrates outside the Presidency towns; and not according to the law of England relating to the dealings of the superior Courts in England with the proceedings of Justices of the Peace in England.

The High Court shall have the same powers with respect to the inquiries* and charges against European† British subjects as Courts of Session have with respect to inquiries* and charges against other persons.

* S. 4.
† S. 71.

87. All Magistrates and Courts of Session, proceeding against European‡ British subjects under this chapter, shall proceed under the provisions of this Act and not according to the law of England relating to Justices of the Peace; and all the provisions of this Act, not inconsistent with the provisions of this chapter, shall apply to such proceedings.

Proceedings against European British subjects to be regulated by this Act.

‡ S. 71.

88. European§ British subjects sentenced to imprisonment shall be confined‖ in such places as the Local Government may either specially or generally appoint.

Place of confinement.

§ S. 71.
‖ S. 303, n.

PART III.

OF THE POLICE.

Part III, which immediately follows the general provisions already described, deals with the very earliest stage of criminal proceedings—that which is left in the hands of the Police. This is stated in the existing Code in a confused manner, and it is by no means easy for the reader of it to draw the line between the functions of the Police and those of the Magistrate. The present arrangement, I hope, will make this quite clear. In certain cases, the Police may arrest without warrant. In those, and in certain other specified cases, they may collect evidence, and, in order to enable them to do so, it is necessary to arm them with the power of asking questions and requiring answers. No very material alteration in the present system is suggested.

Notes by Select Committee on Chapter VIII.

We have added "Murder" and "Offences against the State" to the list of offences which it is the duty of the public to report: and we have embodied several provisions of the Bengal Regulations, which define the responsibility of landholders and others for the detection and prevention of local crime.

CHAPTER VIII.—ss. 89—91.

OFFENCES OF WHICH INFORMATION MUST BE GIVEN TO THE POLICE, AND DUTY OF THE PUBLIC.

121.—Waging or attempting to wage war, or abetting the waging of war against the Queen.

121A.—Conspiracy to commit certain offences against the State.

122.—Collecting arms, &c., with the intention of waging war against the Queen.

123.—Concealing with intent to facilitate a design to wage war.

124.—Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

124A.—Exciting, or attempting to excite, disaffection.

125.—Waging war against any Asiatic power in alliance or at peace with the Queen, or abetting the waging of such war.

126.—Committing depredation on the territories of any power in alliance or at peace with the Queen.

130.—Aiding escape of, rescuing, or harbouring, such prisoner, or offering any resistence to the recapture of such prisoner.

302.—Murder.

303.—Murder by a person under sentence of transportation for life.

304.—Culpable homicide not amounting to murder if act by which the death is caused is done with intention of causing death, &c.

If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.

382.—Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.

392.—Robbery.

If committed on the highway between sunset and sunrise.

All persons to give information of certain offences.

89. Every person aware of the commission of any offence made punishable under sections one hundred and twenty-one, one hundred and twenty-one A, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-four A, one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty, three hundred and two, three hundred and three, three hundred and four, three hundred and eighty-two, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, three hundred and ninety-nine, four hundred and two, four hundred and thirty-five, four hundred and thirty-six, four hundred and

forty-nine, four hundred and fifty, four hundred and fifty-six, four hundred and fifty-seven, four hundred and fifty-eight, four hundred and fifty nine, or four hundred and sixty of the Indian Penal Code, shall, in the absence of reasonable excuse, the burthen of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate.

393.—Attempt to commit robbery.

394.—Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.

395.—Dacoity.

396.—Murder in dacoity.

397.—Robbery or dacoity, with attempt to cause death, or grievous hurt.

398.—Attempt to commit robbery or dacoity, when armed with deadly weapon.

399.—Making preparation to commit dacoity.

402.—Being one of five or more persons assembled for the purpose of committing dacoity.

435.—Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards.

436.—Mischief by fire or explosive substance, with intent to destroy a house, &c.

449.—House-trespass in order to the commission of an offence punishable with death.

450.—House-trespass in order to the commission of an offence punishable with transportation for life.

456.—Lurking house-trespass or house-breaking by night.

457. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

If the offence is theft.

458. Lurking house-trespass or house-breaking by night after preparation made for causing hurt, &c.

459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

460.—Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.

176.—Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.

If the notice or information required respects the commission of an offence, &c.

177.—Knowingly furnishing false information to a public servant.

If the information required respects the commission of an offence, &c.

202.—Intentional omission to give information of an offence by a person legally bound to inform.

203.—Giving false information respecting an offence committed.

Should it be proved that any person was aware of any of the above offence and through wilfulness omitted to give information, such person is punishable under s. 176, Penal Code. See also ss. 177, 202 and 203, Penal Code.

The High Court, N. W. P., in their Circular Order, 1210, 1856, lay down that this section applies to the whole community of any place. The Calcutta Court (Lahai Mundul, S. W. R., VII, 29, C. R.) have said that the refusal of a person to join in a dacoity does not necessarily imply that he was cognizant of the offence being committed,

CH. VIII. ss. 90, 91.

or render him liable to punishment under this section for not giving information. The ruling, however, does not seem a safe one.

See "Duties of landholders," "Bad characters" and "Time-expired convicts" under Circulars in Appendix.

Landholders and others bound to report certain matters.

90. Every Village Headman, Village Watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police Station, any information which he may obtain respecting—

(*a.*) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(*b.*) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(*c.*) the commission or intention to commit suttee or other non-bailable offence at or near such village;

(*d.*) the occurrence of any sudden or unnatural death.

In Oudh, the practice of calling upon Chaukidars by village communities to make good the property stolen in their beat, is strictly forbidden.

S. 6, n.

All persons to assist Magistrate and Police in certain cases.

91. Every person is bound to assist a* Magistrate or Police officer demanding his aid in the prevention of a breach of the peace,

or in the suppression of (*a*) a riot or an affray (*b*),

or in the taking of any other person whom such Magistrate or Police officer is authorized (*c*) to arrest (*d*).

(*a*). A riot is thus defined in the Penal Code—

Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. P. C., s. 146.

An assembly of five or more persons is designated as an "unlawful assembly," if the common object of the persons composing that assembly, is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any Public Servant in the exercise of the lawful power of such Public Servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. (P. C., s. 141.)

(*b*). And an affray thus—

When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray." (P. C., s. 159.)

An intentional omission to render this assistance when called upon is punishable under s. 187, P. C.

(*c*). All proceeding under this section to make an arrest would do well to state what authority they act on, as otherwise any person resisting them could raise the plea of right of defence.

(*d*). The following sections of the Penal Code are worth remembering in connection with this section:—

Owner or occupier of land on which an unlawful assembly is held.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest Police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Liability of person for whose benefit a riot is committed.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or is the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

CH. IX. s. 92.

Liability of agent of owner or occupier for whose benefit a riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Remarks of Select Committee on Chapter IX.

We have added sections empowering private individuals to arrest, in non-bailable cases, for offences for which a Police officer could arrest without warrant when committed in his sight,—a power which at present exists, but is not distinctly conferred by law. In the chapter on Police investigations, we have rendered it obligatory to reply to questions asked by a Police officer, and we propose to provide that a Magistrate may assist the Police, when necessary, by coming to the spot, and recording depositions or confessions.

We have inserted a section to provide for the arrest, by masters and mates of British merchant vessels, of deserters from such vessels, and have defined the duty and responsibility of the Police in this matter.

CHAPTER IX.—ss. 92—108.

Of Arrest without Warrant.

When Police may arrest without warrant.

92. A Police officer may, without orders from a Magistrate* and without a warrant (*a*), arrest,†—

* S. 6, n. (*a*).

† Ss. 176—182.

(*a*). Police officers cannot pay too much attention to the words "may" and "reasonable": it is by no means intended that they are to arrest persons in the hope of something being hereafter proved against them. Their duty is, if they acquire the information which leads them to arrest from a third party, to make short and summary inquiries, and judge whether the grounds for suspicion are reasonable or not. Mere vague surmise or supposed hearsay information will never do. No precise rule can be laid down, as each case must be decided upon its attendant circumstances. The golden rule is, abstain from arrest until proof of some substantial fact or train of circumstances has been obtained, which will *with reason* show the suspected party to have been an offender; if the Police can show that events as understood *at the time* justified arrest, no subsequent release will stigmatize their conduct. See s. 107 (n.).

Again, Police officers often, without arresting a man themselves, make him over to some neighbour or third person to keep; they should remember that the law considers such persons in their custody, and that they are as much responsible as if they had made the arrest themselves. (Cal. H. C., Behary Sing, S. W. R., VII, p. 3.) Sepoys when arrested by the Police for a bailable offence are not to be detained longer than is necessary for obtaining satisfactory evidence for their identification. Panj. Pol. C. 16 of 1872.

Firstly.—Any person who in the sight of such Police officer commits a cognizable* offence.

Secondly.—Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence.

* S. 4, & Sched. IV., col. 3.

Thirdly.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

Fourthly.—Any person who has been proclaimed either under this Act,† or in a District or Police Gazette, or notification.

† S. 171.

Fifthly.—Any person found with property in his possession which may reasonably be suspected to be stolen property (*b*).

(*b*). Stolen property is defined in the Penal Code as property the possession of which has been transferred by theft, extortion, robbery, criminal misappropriation or criminal breach of trust. But it should be remembered that, when such property subsequently comes into the possession of a person legally entitled to the possession thereof, it ceases to be stolen property. (S. 410, P. C.)

Sixthly.—Any person who obstructs‡ a Police officer while in the execution of his duty, or who escapes from lawful custody ;§ and

‡ Ss. 183, &c., P. C.

§ Ss. 223, 225A, P. C.

Seventhly.—Any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army (*c*).

(*c*). A Police officer who exceeds his power under this section can be punished under s. 220, P. C., and persons giving false information through which others are arrested commit offences under ss. 177—182.

All persons arrested under this section are not to be detained, but to be forwarded forthwith either to the Magistrate or officer in charge of a Police station.—S. 101. Europeans apprehended on suspicion of being deserters should always be sent to the nearest Justice of Peace, and not to a Military Station.—Cen. Prov. Cir. XXV of 1867, and N. W. P., CXLIII, 1867. In the Panjab (Cir. XXX of 1864) whether European or Native, they should be made over, as soon as possible, to the nearest Magistrate (this was subsequently, by C. O., altered to Justice of Peace: Query—Is not the Magistrate now the proper person, *vide* s. 101?) ; the former, if possible, before an European Magistrate. For detailed rules about arrest of deserters in the N. W. P., Central Provinces, Oudh and Panjab, and also for payment of rewards for such service, *vide* App., head Deserters.

CH. IX. ss. 93, 94.

Person charged refusing to give his name and residence.

Sched. IV., col. 3.

93. Any person known to have committed or suspected of having committed an offence for which a Police officer is not authorized to arrest* without a warrant, and who refuses on demand of a Police officer to give his name and residence,

or gives a name or residence which there is reason to believe to be false,

may be detained by such Police officer for the purpose of ascertaining the name or residence of such person; and shall, within twenty-four hours, be forwarded to the Magistrate having jurisdiction, unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released.

† S. 137.

Arrest of vagabonds.

‡ S. 6, n.

94. An officer† in charge of a Police station (*a*) may, without orders from a Magistrate‡ and without a warrant, arrest or cause to be arrested any person found lurking (*b*) within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, or any person who is a reputed robber, house-breaker, thief, receiver of stolen property§ knowing it to be stolen, or who is of notoriously bad livelihood (*c*).

§ S. 92, n. (*b*).

(*a*). Only officers in charge of Police stations or officers superior in rank to them can arrest without warrant under this section. If such officer cannot go himself, and deputes a subordinate, he should follow the procedure laid down in s. 102.

(*b*). It may at first sight seem absurd to draw attention to the fact that "*lurking*" is the cardinal point of the whole of this section. Many Police officers by their conduct show that they read this section thus, "lurking within the limits of such station *or*, &c." Many a man who has just left jail is brought up by them under this section before time has been given to show whether he intends to reform or not; it does not seem to them to matter in the least whether the man has been lurking or whether he has been wandering about in the broad day-light seeking for some one to employ him.

With regard to foreigners of suspicious character, C. O., 27 A. of 1868, N. W. P., directs that, when any such are in a district, and their presence is undesirable, they should not be forwarded on to another district, but a report should be made to the Local Governments who, if sufficient cause be shown, will deal with them under ss. 3 and 4, Act III of 1864.

No vexatious and unnecessary interference should be exercise towards bodies of peaceable foreign merchants who visit India with the distinct aim of *bonâ fide* traffic, or reside at centres of commerce and industry.

Governor-General in Council will invest Chief Commissioners with powers of Local Government under Act III of 1864, and whenever shown to his satisfaction to be necessary, will extend the remaining provisions of that Act where the first four sections are not sufficient security. These rules are of general application in Bengal and Northern India.—See App., head Foreigners and European Vagrants.

(*c*). The notes under 92 should be consulted. Magistrates should proceed with persons thus arrested under s. 504.

Regulation (Beng.) XX of 1867 requires all village watchmen to convey to the Police station immediate intelligence of any vagrants or other persons without means of subsistence, &c., who may be lurking about the country.

Police to prevent certain offences.

95. Every Police officer shall prevent, and may interpose for the purpose of preventing, the commission of any cognizable* offence.

* S. 4.

And if he do not do so, he is guilty of dereliction of duty. (S. 29, Act V of 1861.)

Information of design to commit such offences.

96. Every Police officer receiving information of a design to commit any such offence,† shall communicate such information to the Police officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

† S. 95.

And if he do not do so, he is punishable under s. 119, P. C. (See Act V of 1861, Preamble (notes); Appendix, head Police.

Arrest to prevent such offences.

97. A Police officer knowing of a design to commit any‡ such offence may§ arrest, without orders from a Magistrate‖ and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

‡ S. 95.
§ Ss. 176—182.
‖ S. 6, n.

The penalty for not doing so is contained in s. 221, P. C.

Injury to public property.

98. A Police officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public property, moveable or immoveable,

or to prevent the removal or injury of any public land-mark or buoy or other mark used for navigation. If necessary such Police officer may detain the person doing such injury according to the provisions of section ninety-three.

These offences are punishable under ss. 430—434, P. C.

A Police officer not interposing would be guilty of dereliction of duty, and punishable under s. 29, Act V of 1861.

Ingress to be allowed into house entered by person of whom Police in search.

99. If there is reason to believe that any person liable to arrest under this chapter without a warrant, of whom a Police officer is in search, has entered into or is within any house or place, it shall be the duty of the person, residing in or in charge of such house or place, on the demand of such Police officer, to allow ingress thereto and all reasonable facilities for a search therein.

See note on s. 100.

Procedure where ingress not obtainable.

100. If ingress to such house or place cannot be obtained under section ninety-nine, the Police officer authorized to make the arrest shall take such (*a*) precautions as may be necessary to prevent the escape of the person to be arrested and send immediate information to any (*b*) Magistrate having jurisdiction.

(*a*). All persons obstructing or resisting a Police officer when thus engaged are punishable under s. 186 or 225, P. C., as the case may be.

As soon as a warrant has been obtained, the Police officer can proceed in accordance with ss. 179 and 180.

(*b*). This would be any Magistrate who has power to take up cases on complaint or Police report without reference (s. 21), and within whose jurisdiction the offender may happen to be or the "venue" to lie under Chapter VI, or to whom the case had been referred by a Magistrate duly empowered to refer cases.

If no warrant can be obtained without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the Police officer may make an entry into such house or place and search therein.

Person arrested to be taken before Magistrate or officer in charge of Police Station.

101. A Police officer making an arrest under this chapter shall, without unnecessary delay,* take or send the person arrested before the Magistrate having jurisdiction† in the case, or before the officer in charge of a Police station.‡

* S. 124, n. (a).

† Chap. VI.

‡ S. 137.

In connection with this section, should be read s. 124.

Accused not to be detained by Police more than twenty-four hours without special authority.

124. No Police officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable; and such period shall not, in the absence of the special order of a Magistrate whether having jurisdiction to enquire into or try the case or not, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Procedure when Police officer deputes subordinate to arrest without warrant.

102. When any officer§ in charge of a Police station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such officer without a warrant‖ he shall deliver to the Police officer required to make the arrest an order in writing, specifying the person to be arrested and the offence¶ for which the arrest is to be made.

§ V. 137.

‖ Schd. IV., col. 3.

¶ Ss. 92, &c.

The provisions of sections ninety-one and one hundred and seventy-six to one hundred and eighty-two (both inclusive) shall apply to every order in writing issued under this section.

S. 91 refers to the duty of all persons to assist Magistrate and Police in certain cases. Ss. 176—182, to the mode of executing a warrant of arrest, any resistance made to arrest, search and breaking open of house or zenana into which the person, who is named in the warrant, shall have entered, and the restraint to which arrested persons are to be subjected.

Police may pursue offenders into other jurisdictions.

103. For the purpose of arresting any person accused of a cognizable** offence, a Police officer may pursue any such person into the limits of the local jurisdiction of another Police officer, whether subordinate to the same†† Magistrate as

** S. 4.

†† S. 6, n.

himself, or to the Magistrate of any other District, and whether such place be in the same Province or not.

Detention of offenders attending Court.

104. Any person attending a Criminal Court, although not upon an arrest or summons on a complaint made, may be detained by such Court for the purpose of examination, for any offence* which from the evidence he may appear to have committed, and may be proceeded against† as though he had been arrested or summoned on a complaint made.

When the detention takes place in the course of an inquiry‡ under Chapter XV, or after a trial‡ has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses reheard.

* S. 4.

† Ss. 189, &c. 208, &c. 218, &c. 222, &c. 231, &c.

‡ S. 4.

It will not be necessary to entertain a fresh complaint, or ask for a fresh order of reference from a Magistrate before proceeding to try a man under this section.

Of Arrest by Private Persons.

Arrest by private persons.

105. Any private person may arrest§ any person who, in his view, commits a non-bailable‖ and cognizable¶ offence.

§ Ss. 176—182.

‖ Sched. IV., col. 5.

¶ S. 4.

Should the arrest be a successful one, the person arrested should be handed over without any unnecessary delay to the Police. See s. 107.

Arrest of deserters from British Ships.

106. The master or mate of a British merchant ship may, either with or without the assistance of the Police, who are bound to aid if so required by such master or mate, arrest** seamen or apprentices duly engaged under the Statute 17 & 18 Vic., c. 104, or other law for the time being in force relating to merchant shipping, who refuse to join or desert from the vessel in which they contracted to serve.

** Ss. 176-182.

Such arrest shall be made only at the request and on the responsibility of such master or mate, who shall be required by the Police to accom-

pany the arrested person, should he be apprehended, before the Magistrate* having jurisdiction; and it shall be the duty of such master or mate to obey such requisition.

* Chap. VI & s. 21.

How to proceed with person arrested.

107. A private person making an arrest under this chapter shall forthwith make over the person arrested to a Police officer; and, in the absence of a Police officer, shall take such person to the nearest Police Station. The Police shall deal with such person according to the provisions of section ninety-two or ninety-three, as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

S. 92 tells whom the Police may arrest without a warrant.

S. 93 is the section under which the Police are authorized to ask for the name and address of, and detain until given, any person suspected of having committed a non-cognizable offence.

Arrest by a private person does not supersede the responsibility that attaches to the Police officer who received the arrested person under this section; it is his duty to act with as much caution and in the same way as he would have done in making an arrest himself under ss. 92-93. There must be some reasonable complaint or suspicion. In Queen *v.* Behari Singh, the Court laid down that such must be founded on some definite fact tending to throw suspicion on the person arrested, and not on mere vague surmises or information. Where arrest is founded on the latter only, the Police officer to whom the person arrested is brought should refuse to participate in an illegal arrest.

This of course does not apply where, by a special provision of the law, the Police have no option (Act XXXI of 1860, s. 25 *et al*,) Panj. Cir., Pol., XXXI of 1867.

Offence committed in Magistrate's presence.

108. When any offence is committed in the presence of a Magistrate,† he may order any person to arrest‡ the offender, and may thereupon commit him to custody, or, if the absence is bailable, may admit him to bail.§

† S. 6, n.
‡ Ss. 176—182.
§ S. 160.

CH. X.
ss. 109, 110.

Remarks of Select Committee on Chapter X.

We have made the venue sections of the Code applicable to Police inquiries, so that henceforth the same principles will guide a Magistrate and a Police officer in determining whether he has jurisdiction to inquire or to investigate.

We have provided that Police officers, deputed by the officer in charge of the Police station to make an investigation, should have power to take the statements of persons and search for any necessary evidence, in the same manner as the officer in charge of the Police station.

We have cleared up a doubt which previously existed as to the detention in Police custody by order of a Magistrate, and whilst we have not required the accused person to be at once brought before a Magistrate—as that course would defeat the object in view—we have provided that, if such an order is passed by a subordinate Magistrate, he shall report the fact and his reasons for passing the order to the Magistrate of the District or of the division of the District,—thus securing a close supervision over the grant of these orders.

We have provided that officers in charge of a Police station holding inquests may summon any necessary witnesses, and we have empowered Magistrates to hold inquests in substitution for, or in addition to, the inquest by the Police. It is proposed also that any powers exerciseable by a subordinate Police officer may be exercised by his superior throughout the local jurisdiction of the superior.

CHAPTER X.—ss. 109—138.

POWERS OF THE POLICE TO INVESTIGATE.

* S. 137.

What offences Police officer may investigate.

† S. 4.

‡ Sched. IV., col. 3, & s. 4.

109. An officer* in charge of a Police Station may, without order of a Magistrate, investigate† any offence cognizable‡ by the Police.

It matters not how it may come to his knowledge,—by complaint, report, suspicion, &c.

§ S. 20.

What offence Police may not investigate.

‖ S. 4.

110. A Police officer may not, without the order of a Magistrate of the first§ or second class, investigate‖ an offence not cognizable‖ by the Police.

A Magistrate of the first or second class may, as provided in sections twenty-four and twenty-six, order the Police to investigate ;‖ and, on receipt of an order to investigate‖ a non-cognizable‖ case, a Police officer may exercise the same powers in respect of the investigation‖ as in a cognizable‖ case.

A Magistrate directing an investigation regarding a case not cognizable by the Police shall first send his order to the Sub-District officer, and not to the officer in charge of the Police station direct.

The Sub-District officer will then forward with his endorsement the order to the officer selected by him: the officer will investigate as he would in a cognizable case, except that (1) he will not send in a first information report—*vide* note, s. 112; nor (2) will he arrest the accused without a warrant. (Lower Bengal Rules.)

Saving of powers vested in Police by special or local law.

111. Nothing in section one hundred and ten shall be held to interfere with the exercise of any powers vested in a Police officer by any special or local law, or with the performance of any duty which is imposed upon a Police officer by any such special or local law.

Complaint to Police to be in writing.

112. Every complaint (*a*) preferred to an officer in charge of a Police Station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

(*a*). Complaints under this section should *never* be made on oath: false information given can be punished under s. 182 or 211, Penal Code. The Madras and Calcutta High Courts (Surbunna Guandan and others, Mad. I, 30; S. W. R., IV, C. L., 11; Malli Sahay, S. W. R., V, 32) have agreed that the mere fact of a complaint having been preferred to an Inspector of Police, even supposing he do not act upon it, if it be proved that the complaint has been falsely and deliberately made, is sufficient to support a conviction under s. 211. It is not necessary that the charge should have been fully heard and dismissed.

Police Daily Diary.

All the Local Governments in Northern India have ordered that the substance of complaints preferred shall be recorded in the Station Daily Diary (*vide* note, s. 44, Act V of 1861, App., head Police), at the time when, and in the order in which, they are received; after the complaint should be recorded, the action taken then and there by the Police or the instructions given to the complainant by the Police. In the N. W. P., every person making a charge, whether accepted or refused, or making a report, or laying information of any kind, will be invariably furnished by the officer in charge of the station with a receipt duly filled up out of the Check Book provided for that purpose.

Check Book.

CHECK.						RECEIPT.					
Date of Report.	Name of Plaintiff.	Name of Defendant.	Nature of Report.	Value of property stolen.	Order given by Police to the person making report.	Date of Report.	Name of Plaintiff.	Name of Defendant.	Nature of Report.	Value of property stolen.	Order given by Police to the person making report.

N. W. P. Pol. C. O. 45 of 1866.

As regards the first information report, the N. W. P. and Panjab Governments have contented themselves with issuing no instructions. In the Panjab, when the complaint made or information given is respecting a cognizable offence, any Policeman present should at once enter the same in the Charge Register Book, and both he and the complainant will then sign both foil and counterfoil: the counterfoil should then be torn off and sent to the District Superintendent by the first opportunity. This procedure should also be taken with offences taken notice of by the Police under s. 92, para. (1), or s. 24, Act V of 1861 (whether cognizable or not); the Police officer making the arrest will be considered the informant.

Where the complaint is of a non-cognizable offence, the entry is to be made in the Diary, should it however afterwards appear that the complaint is a cognizable one, it will be at once transferred to the Charge Register.

Lower Bengal Rules concerning the First Information Report.

This report is prepared under this section and submitted under s. 114.

Every *cognizable* complaint preferred before the Police, no matter whether *primâ facie* false or not, whether serious or petty, whether relative to an offence punishable under the Penal Code, or any special or local law (Municipal Bye-laws and Railway and Telegraph Acts excepted), shall be reported in the above form.

If a Magistrate directs a *cognizable* case to be investigated by the Police, and the Police officer has not received any previous information regarding the crime, he shall, on receipt of the Magistrate's order, prepare a First Information Report.

If the complaint shall have been by petition, the petition, together with the Magistrate's endorsement, shall be treated as the original complaint.

In many cases, such as "escape from lawful custody," &c., &c., the Police will themselves be the informants.

In column 1 the date and hour at which informant reaches the Police station should be carefully entered.

In the second column should be entered the name of the person who actually brings the information to the Police, and the names of other parties concerned, or accused, such as "Chowkeedar A. B. sent by C. D., Gomashta of E——— village, to report a dacoity in the house of F. G.;" or when the investigation is ordered by a Magistrate, the entry should be "Deputy Magistrate A. B. on the petition of C. D. regarding the illegal confinement of E. F."

If the accused is a Government servant, it should be so stated, and intimation sent to his official superior by the District Superintendent. Column 3 should show (1) the offence as nearly as possible in the words of the Schedule attached to this Code, or of the local or special law; (2) the section under which it falls; (3) the value of the property alleged to have been stolen.

A short history of the case, as reported by the informant, should be entered. The Police officer receiving the charge should enter the section under which he receives the charge,—that is to say, under which he proceeds to make the inquiry; it will very often happen that after inquiry the case will be proved to be very different from that reported; Police officers should not beblamed for these discrepancies.

The date of occurrence should always, if possible, be ascertained and given; the informant may not be able to give this information, in such cases it should be given in the Special Diary, or if it is impossible to give the exact date, an approximate date should be given, thus,—"Deceased was for the last time seen alive on the 5th, and his body was not found till the 8th;" or "the complainant left his home on the 10th, and on his return, on the 13th, found he had been robbed."

The place of occurrence of the crime should be clearly indicated, to enable the District Superintendent, or the Magistrate having jurisdiction, if it is necessary for them to do so, to proceed to the spot at once.

In the last column should merely be given the name and designation of the Officers sent to investigate, and any other important steps taken *before* proceeding to investigate, such as, "information sent to the neighbouring Stations of A., B., and C.," the measures adopted to arrest the offender, &c., &c.

Also, if acting under the discretionary power vested in him by this Code, the Officer receiving the complaint abstains from holding local inquiry or from entering on an inquiry at all.

When property is alleged to have been stolen, the original list brought by informant should be attached to the First Information Report, for submission through the Court Sub-Inspector to the Magistrate. If no list is brought, and none can be furnished, the fact should be entered and the list submitted with the first special diary.

The first part should always be signed and filled in by the Officer in charge of the Station at the time of the receipt of the information, no matter what his rank may be.

The second part should be *verbatim* the story told by the informant. If the complaint is given in writing, the original paper should be attached to the form, and the second part not written. This part should always be signed by the person giving the information, but the Police can never administer an oath to him.

After recording as above, the Police officer should add such additional matter elicited by comment or interrogation as may be required to explain any doubtful or unintelligible points in the *verbatim* statement. Thus, if the person charged be detained in arrest at the place of occurrence, the informant should be called upon to name the hour and manner of arrest, and the reason for detention.

In cases of delay in bringing complaints, explanation of such delay should always be demanded. So also vague statements of suspicion against parties accused should never be recorded without inquiring the reasons of such suspicion. Careful interrogation of an informant tends to strengthen a true complaint and expose a false one. Providing that, while so examining an informant, the Police officer shall record both question and answer.

These reports should be numbered consecutively in each Police Station monthly. The first report received at the Police Station (no matter when the crime occurred) after 12 o'clock on the morning of the first day of the month, should be number 1, and the last report received before 12 o'clock on the night of the last day of the month the last number. Great care should be taken in filling in the date and hour in the first column.

One copy of the form will be sent to the District Superintendent and filed in his office. Another will be sent to the Sub-District Police Officer for orders and transmission to the Court Officer, who, after filling

in columns 1 to 8 of the "general register of crime," will present the form to the Magistrate for orders. The form will then be filed in the Magistrate's Court.

At Sub-districts not under charge of a resident Police officer, one copy of the report will be sent by the Officer in charge of the Station direct to the Sub-divisional Magistrate.

When information is received regarding the commission of any of the following seven descriptions of crimes, these reports should be sent at once, and by the quickest possible means of conveyance, and not kept till the regular dâk is despatched:—

1.—Murder.

2.—Dacoity.

3.—Serious Affrays and Illegal Assemblies likely to lead to serious riots.

4.—Theft, Highway Robbery, House-breaking, &c., in which Rs. 600 or upwards is stolen.

5.—All cases in which Europeans are charged with any heinous crime.

6.—All cases in which Police officers are accused of serious crimes.

7.—Counterfeiting Government Stamps or Coins.

In important cases the District Superintendent will, on receipt of the First Information Report, submit a special report of the case for the information of the Magistrate of the District and Commissioner.

A report once made should never be cancelled, even supposing that half an hour after it has been made there comes information that it is false; this subsequent information should be recorded in its proper place in the Diary.

Vague rumours of crime are not to be reported in this Form but in Station Diary. Immediately on authentic information having been received, Report No. 1 should go in.

The Register (Form No. 1) should be kept at Police Stations, and the Officer in charge should send to each Outpost leaves detached from the register, retaining the counterfoil only. The Officer in charge of the Outpost will, on receipt of a complaint, submit one form, unnumbered, direct to the Sub-district Officer. The second copy will be forwarded to the Police Station, and the Officer in charge will, after numbering it, and taking copy on the counterfoil, forward the report to the District Superintendent.

On the completion of the inquiry, the Officer in charge of the Police Station should, to facilitate reference, write at the head of the counterfoil of this register the name and number of the final form (A., B., C. or D.)

First Information Report, Bengal.

The First Information Report should be given in the following form:—

The first information of a cognizable crime reported at Police Station, Sub-District, District, under s. 112.

Date and hour of receipt at Police Station of first information.	Name of informant and parties concerned.	Crime reported, amount stolen, &c.	Date of occurrence of the crime.	Place of occurrence, direction and distance from Police Station.	Steps taken by Officer in charge of Station.

A. B.,

No. *In charge of Police Station.*

Date of despatch

Complainant or informant's statement.

The following Circular directs how these Station Daily Diaries are to be kept in the N. W. P., Panjab:—

Station Diaries, N. W. P., Panjab.

The Daily Diary of Station-house should be written in original by the Head Constable or Clerk (in the Panjab by the Deputy Inspector, or in his absence by the officer in charge of the Station), and be signed by the Officer in charge of the station. It is to be a brief record of the proceedings of the Police of occurrences reported to them, or of which they have obtained information. It must invariably contain a report of the morning parade, and record whether all the police be present, or if absent, whether on duty or leave, or without leave. It should record the duties to be performed during the day, and the manner of distributing those duties. Subsequently, it will enter all reports made at the station, the charges preferred, the arrests made, the time of arrest, and the time of forwarding prisoners taken into custody, the return of Police from duty, and the manner in which the duty has been performed. The Diary should be as brief as possible, but be a complete record of the occurrences of the day. An exact copy of all entries will be made for despatch to the District Superintendent. See however specially notes to s. 44, Act V 1861, App., head Police.

Police Circular No. 2, 1864, also gives the following instructions:—

It has been urged by some Magistrates that they cannot be responsible for the detection of crime, because Police Diaries are not sent to them direct; but with a proper understanding between the Magistrate of the District and District Superintendent, there should be no ground for complaint. If both are at the Central Station, the Diaries should be taken to the Magistrate of the district, at whatever hour may be fixed as soon after the receipt of the Diaries as possible. If the District Superintendent is in the interior of the District and the Magistrate in the Central station, all Diaries should be taken on arrival to the Magistrate by Inspector on duty, who should receive and see to the execution of any instructions he may give, and then immediately forward the Diaries to the District Superintendent. Those of the stations and sub-divisions so near to the District Superintendent's Camp that they could be submitted to him and despatched by that night's post to the Magistrate, should come to him first, and after endorsement of his orders, and notes being taken of the same for execution, should be forwarded by that post. When the Magistrate is in Camp, the Diaries of stations near his Camp should be brought before him, and, after the issue of instructions by him, be sent to the District Superintendent.

The Police should report all serious cases immediately both to the District Superintendent and to the Magistrate direct.

Complaint in non-cognizable cases.

113. If a complaint is preferred to an Officer in charge of a Police Station* of the commission within his local jurisdiction of an offence which is not cognizable† by the Police, the Police officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.

* S. 137.

† S. 4.

And if he do not fulfil the terms of this section, he will be guilty of dereliction of duty. (S. 29, Act V of 1861.)

CH. X.
s. 114.

See notes to s. 112. People are not to be dissuaded from bringing written complaints, but encouraged.—Cen. Prov. Cir. XXXVIII of 1863.

Upon information, &c., Police officer in charge of station to proceed in person or depute a subordinate.

114. If, from information or otherwise, an Officer in charge* of a Police Station has reason to suspect the commission, within his local jurisdiction, of an offence† cognizable‡ by the Police, he shall send immediate intimation to the Magistrate§ having jurisdiction (*a*), and shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate (*b*)‡ the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender (*c*).

* S. 137.
† S. 141, n.
‡ S. 4.
§ Chap. VI.

(*a*). The Magistrate having jurisdiction is ordinarily the Magistrate of the district, or the Magistrate of the division of the district in which the offence has been committed, but for exceptions to this, see Chapter VI. Notice should also be given at the same time to the District Superintendent of Police, *vide* note, s. 112. See also notes under s. 32.

C. O. 27 of 1870 directs that special reports of the following crimes only be forwarded to Commissioners:—

1*st*.—Murder.	4*th*.—Robbery.
2*nd*.—Riot.	5*th*.—Being a Thug, s. 310, P. C.
3*rd*.—Dacoity.	6*th*.—Sutti.

7*th*.—Any other crime which the Deputy Commissioner thinks fit to report.

2. District Superintendents to send to Inspector-General direct special reports in the crime of—

1*st*.—Dacoity
2*nd*.—Being a Thug, s. 310, P. C.
3*rd*.—Robbery by administering drugs.
4*th*.—Sutti.
5*th*.—Murders and serious affrays originating in about land, and its accessories.
6*th*.—Kidnapping.

If the crime be a heinous one, the information sent under this section should be conveyed in a red envelope.—N. W. P., Panjab and Oudh.

P. Cir. 39 of 1871 directs that, as regards reporting cases under ss. 312, 313, 314, 315, and 316, I. P. C., District Superintendents are directed, when such cases are reported in the Diary, to send an extract for the information of the Magistrate of the District.

It is not desirable that such cases should be sought for and raked up, and District Superintendents will issue no instructions to Police officers at stations; it is merely desired that when such cases are reported at a Police station and entered in the Diary, that they should be brought to the notice of the Magistrate of the District, and be treated as ordinary non-cognizable cases, in which injured parties can make their own complaints to the Courts.

On the occurrence of any crime of particular heinousness, such as a serious dacoity, or of political or general interest, immediate report of the case is to be forwarded by Commissioners to Government through the I. G., N. W. P., stating whether any reward has been offered for information leading to the conviction of the perpetrators—Pol. O. 7 A. of 1871. For similar rules in Panjab and Bengal, see s. 12, Act V of 1861, note.

By Oudh Police Manual, heinous crimes to be at once reported to the District Superintendent; he will send an English report to the Magistrate of the District, who, in his turn, will forward it to the Commissioner of the Division.

(*b*). No examination of any persons taken under this section should ever be on oath.—Agra, S. N. A., C. O. 14, 1863 (see note on s. 112).

(*c*). This section should be read together with ss. 116, 117, by which its provisions are somewhat qualified.

In Lower Bengal the Police are instructed to act as follows:—

In Form C, the final report will be submitted of all cases (*which have actually occurred*) reported to the Police which are cognizable, and in which no particular person is charged by the complainant with having committed the offence, or the Police fail, after inquiry, to discover the perpetrators, or where, when brought against a person named, a charge is shown to be false or unfounded.

Columns (I—VII) are exactly the same as in B Form, and the instructions as to how they are to be filled in apply equally to the one as to the other.

In the last column, a clear history of the case and reason of the failure will be given. It is from this report that the Magistrate will generally form his opinion as to the action taken by the Police.

If, after sending in the final report of a case in B, C, or D Form, the Police obtain a clue to the parties who committed the offence, their having sent in the "final report" will not prevent their immediately proceeding to make a fresh inquiry; and if on the second inquiry the accused is sent up for trial, A Form will have to be submitted; but *if no action is taken*, no further report will have to be made.

Police Officers should bear in mind that a large proportion of C Form indicates a want of success in dealing with crime, which will seriously affect their reputation as detective officers, upon which, in a great measure, their advancement depends. Form C is the same as B, save that in column 6, "ascertained" is put for "said." Columns 7 and 8 are not reproduced, and in last column after "Police" comes "reason of failure."

Police officers shall (*d*) investigate* offences committed within the local limits of their jurisdiction; but they may investigate* offences committed outside of those limits in cases in which a Magistrate * S. 4.

CH. X. s. 114.

might, under the provisions of Chapter VI, inquire into an offence not committed within his District.

(*d*). Oudh C. O. 10 of 1869 instructs that all thefts above Rs. 50 in value shall be investigated by Police, whether plaintiff reports or not. All cattle thefts, however reported, are to be inquired into by the Police.

N. W. P. Pol. O. 45 A. of 1869 directs that in all cases of burglary, attempts at burglary, and in all simple thefts in which property above Rs. 10 in value is stolen, the Police will invariably make local inquiry, and submit a special diary.

Simple thefts of property less than Rs. 10 in value, and attempts at theft, shall not be investigated by the Police, unless the person injured expresses his wish that inquiry should take place. In reporting the case, the Police officer will mention whether such a wish was expressed or not.

The above restriction will not apply to Assistant Superintendents or officers of a superior grade, who can at their discretion order an investigation to be made into cases of theft below Rs. 10, although the party aggrieved have not demanded inquiry. By Crim. Letter 6637 of 1871 the Inspector-General desires that, in future, inquiry may be made in every case of cattle theft, whatever be the value of the cattle stolen, and irrespective of the wish of the owner for such inquiry or otherwise.

It is a good plan for an officer going to investigate to take with him a bustah containing blank forms of charge sheet, bail bond, recognizance order for appearance of witnesses, so that the case may, if possible, be forwarded at once direct, and the accused, if arrested, be sent in the charge of the very constable who was present and assisted at the investigation. Oudh Pol. C. IX of 1871, also in Cen. Prov.

Police Officers should go to the spot, and not, except as provided for in ss. 116, 117, call parties to them. Oudh Manual.

The Police are not to stop following up a track, because the track has taken them to a District under another Government. They must go on till the pursuit can be taken up by the Police of that Government. If not possible before the arrest to communicate with the Police as soon as it is made, they should deliver up their prisoner with full report into the custody of nearest station.

The Officer who first receives notice of any heinous crime to take immediate action.

No such proceeding shall, at any stage, be called in question on the ground that such offence was not committed within such officer's local jurisdiction (*e*).

(*e*). In the Panjab Police Officers are to record all complaints whether in their jurisdiction or not; an officer going to investigate a cognizable case and finding it in the jurisdiction of another station, will send immediate information to the officer of that station, but shall

continue to take all advisable measures in the case. If the officer thus sent for on arrival agree that the offence is within his jurisdiction, the first officer will be relieved by him, and will record a report (intermediate) of all he has done, with date and hour of his relief, and make it over to the relieving officer, who will at foot certify that he has acknowledged the case to have occurred within his station limits. If they disagree, both will continue to investigate conjointly under the order of the senior, and neither shall leave until the investigation is finished or the question of jurisdiction settled. Panjab C. Pol. XXII of 1869.

Preliminary inquiry.

115. Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate* subordinate to him to proceed, to hold a preliminary inquiry† into or otherwise to dispose of such case in the manner provided in this Act.

* S. 41.
† S. 4.

If such Magistrate proceed to investigate, he should follow procedure given in Chapter X; but if to inquire, then that in Chapter XIV or XVII, according to the nature of the offence.

Where local investigation dispensed with.

116. Provided that, when any complaint is made against any person by name and the case is not of a serious nature, the Officer‡ in charge of a Police Station need not proceed in person or depute a subordinate officer to make an investigation§ on the spot, unless such local investigation§ appears to be necessary.

‡ S. 137.
§ S. 4.

See s. 114 note (*d*), and s. 117, note.

Where Police officer in charge sees no sufficient ground for investigation.

117. Provided that, if it appear to the Officer‖ in charge of a Police Station that there is no sufficient ground for entering on an investigation,¶ or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate** having jurisdiction.

‖ S. 137.
¶ S. 4.
** Chap. VI.

CH. X. s. 117.

Such report shall be submitted through such superior officer of Police (*a*) as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the Officer* in charge of the Police Station as he deems fit, and shall, after recording such instructions on such report, transmit the papers without delay to the Magistrate§ having jurisdiction (*b*).

S. 137.

(*a*). These superior officers of Police would be ordinarily the District Superintendent of Police, his assistant, or where neither of these are to be found, the Senior Inspector of Police present at Head-Quarters. The information would usually be submitted in the daily diary, but for full information, see notes to s. 44, Act V of 1861.

Police when to arrest in N. W. P.

Personation of soldier or Police officer.
Harbouring.
Other offences connected with counterfeit coin.
Offences affecting public health, safety, morals, &c.
Abetment of suicide.
Exposure by parent or guardian of child under 13, causing grievous hurt.
Wrongful confinement or restraint.
Criminal assault or force.
Kidnapping.
Habitual dealing in slaves.
Unlawful compulsory labour.
Mischief.
Criminal trespass.
House-trespass.
Dishonestly breaking open any receptacle supposed to contain property.

(*b*). There are many cognizable offences in which arrest by Police as a general rule is not necessary for the ends of justice, even if the facts elicited on Police inquiry tend to show clear evidence of guilt. These offences are enumerated in the margin.

The I. G., N. W. P., presumes, as a general rule, arrest to be unnecessary where any of these offences are comparatively trivial; generally speaking the ties of home and the stake held by the offenders will suffice to prevent flight or evasion of process.

There are of course exceptions, *e. g.*, where there are peculiar circumstances of aggravation or where the offenders are strangers or vagrants, but as a general rule the Police should subordinate their power of arrest (which is conferred to supplement the deficiency of Magisterial authorities and to prevent evasion of justice) to the order and warrant of the Magistrate having jurisdiction.

The offences above specified are of such a nature as to give great facilities for false or unfounded charges, and it is therefore important that the Police should abstain from interfering with the liberty of the accused, until the charge is substantiated in a Court of Justice. *Vide* s. 125, note.

Abstaining from arrest will not prevent Police inquiry. The crimes being cognizable by Police should be followed by inquiry, whenever such is demanded, but the result of this inquiry should be reported and Magistrate's orders taken before actual interference with the accused. There are many offences cognizable by Police, where the process which should ordinarily issue is a summons not a warrant, and it is absurd to suppose the law required arrest to be made by the Police (even if followed by the accused being forwarded on bail) where the superior authority of the Magistrate is directed to an ordinary issue of summons in the first instance.

The report sent in such case in the N. W. P. should be in the following form:—

Report of Charges refused by the Police Station of _____ DISTRICT.

the _____ *day of* _____ 187 _____ *on*

Date.	Hour brought to Station.	Name and address of complainants.	Nature of charge or complaint.	Name and address of person accused.	Name of Station with Officer on duty.	Reason why charge was refused.	REMARKS.

Complainant's name

Name of accused

Nature of charge

Reason why charge was refused

Signature

Lower Bengal Rules.

VI. A Police Officer may consider a charge against a person named well founded, and yet not make an arrest.

VII. By s. 117 a discretionary power is given in this respect. If a Police Officer shall not consider the immediate apprehension of the accused necessary for the ends of justice, he shall abstain from pro-

ceeding in the case, and report the substance of the complaint or information, and ask for orders, and act accordingly. But the case must finally be reported in A, B, C, or D Form, according to circumstances.

Instructions cannot be framed to meet every case. The law throws on Police Officers the responsibility not only of deciding whether an accused is guilty or not, but also of determining whether immediate arrest of a guilty party is desirable.

VIII. The fact that the accused, from his position or standing, is not likely to attempt to escape, is one of the circumstances which will lead a Police Officer to think that his immediate apprehension is not necessary for the ends of justice.

IX. Another is that the offence is not likely to be immediately repeated, or to lead to any other offence being committed.

X. For instance, a wealthy zemindar may be accused of having harboured an offender charged with an offence punishable with any term of imprisonment over one and under ten years. Here, though the Police Officer may consider the charge proved, and though he has the power to arrest, he may not consider the immediate apprehension of the accused necessary. In such case he would exercise a sound discretion in reporting the substance of such charge for the information of his superior Officer, and it will depend entirely on the orders of the superior Officer what action he takes afterwards, and in what Form his final report will be sent in.

XI. S. 116 merely does away with the necessity for a *local* investigation in certain cases. S. 114 lays down a general rule that, after despatching a First Information Report of a cognizable offence, a Police Officer shall *proceed to the spot* (where the offence occurred) and there hold an investigation. But when a complaint is not of a serious nature, and is made against a person by name, there may be no occasion for a local investigation (S. 116). The accused is known, and the witnesses are known. The Police Officer may, therefore, summon the witnesses to the Station-house (S. 118), and there hold his investigation. If he finds the offence proved, he may issue his order in writing for the arrest of the accused, and sends him up for trial there and then completing his investigation without visiting the spot. In short, s. 116 authorizes an investigation at a Station-house, and does not give authority to reject a charge. The procedure laid down in this Section may also be adopted with advantage in petty cases in which no person is charged or suspected, and the complainant does not seek inquiry.

XII. The Section under which the Police Officer abstains from inquiry or arrest and the procedure adopted should be entered in the last column of the "First Information" Report, or in the Special Diary. Unless further action be taken by order of the Magistrate, no final report need be submitted. The case will appear as true cases in which no arrests were made, and be entered in column IV of the Quarterly and Annual Statement Form A.

The Oudh Government, in their Police Circular Order 10 of 1870, lay down these rules in the case of Railway officials:—

I. If there is no fear that the accused person will abscond, the Police, notwithstanding that a charge of a cognizable offence may have been made, will act on the discretion conferred on them by s. 117, and deferring the arrest, will report the case for the orders of the Magistrate.

II. If there is fear of the accused person's absconding, the Police will arrest, but will send immediate intimation to the nearest railway official, in order that proper arrangements may be made for carrying on the duties of the arrested person during his absence.

III. If a warrant is issued for the arrest of a railway employé, the Police must execute it, but in this case also, intimation that the arrest has been made must be sent to the nearest railway official, and no pointsman or signaller must on any account be removed from his post until he shall have been duly relieved.

IV. In every case the Police are bound to take such precautionary measures as will prevent the possibility of the occurrence of any accident in consequence of the absence from his post of the arrested person.

V. When such a course is not likely to interfere with the ends of justice, notice of the arrest being about to be made should be given in anticipation to the railway authorities.

The restrictions as to arrest, &c., will only be observed with reference to railway employés on open lines.

The rules are framed, not with a view of giving persons employed by the Railway Company peculiar privileges, but in order to secure the public travelling on the railway from the effects which might result from the withdrawal from their duties of any of the Railway Company's servants or employés.

Cen. Prov. Bk. C. XII of 1871 directs that the Police are *never* to institute a prosecution against a railway employé for an offence under the Railway Act or any minor offence until it has been ascertained by reference from some competent railway authority whether they desire to prosecute. Should, however, Magistrate of District order, the Police must prosecute for such offences. In the case of heinous offences the Police should defer arrest and carrying off the offender until a substitute has been provided by the railway authorities, to whom immediate application should be made. The Police should take all necessary measures to prevent offender's escape, and allow him under watch and ward to continue his duties until relieved.

Magistrates are asked to observe the spirit of these rules, to leave prosecution, as far as possible, to the railway authorities, and never to remove any railway servant until the Company have had time to appoint a substitute.

Police officer's power to summon witnesses.

118. An officer in charge of a Police Station* or other officer making an investigation† may, by an order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the statement of the complainant or otherwise, appears to be acquainted with the circumstances of any case which such officer is investigating;† and such person shall attend as required and shall answer all questions relating to such case put to him by such officer:

* S. 137.

† S. 4.

CH. X 118—120.

Provided that no person shall be bound to answer any questions tending to criminate himself.

All persons are bound to obey such order in writing, but a Police officer can never compel any witness by force to attend before him. (Cal. H. C., Behary Sing, S. W. R., VII, C. R., 5.)

Any persons not obeying such order can be punished under s. 174, Penal Code. Refusal to answer questions is an offence under s. 179, Penal Code.

This procedure may be adopted with advantage where the evidence before the Police is insufficient to justify an arrest, but if the accused person thus summoned by written order is caused to attend by any force or restraint, however slight, he must be regarded as arrested.—Panj. Pol. C. XXVII of 1867, and Agra S. N. A. 20 of 1865.

Oral examination of witnesses by Police.

* S. 137.

† S. 4.

119. An officer in charge of a Police Station,* or other Police officer making an investigation,† may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions criminating himself.

Proviso.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.‡

‡ S. 4, n. (d).

See ss. 159, &c., Act I, 1872.

These statements should appear in the Special Diary or Charge Sheet, not in the Daily Diary.

No inducement to be offered to confess.

120. No Police officer or other person shall offer any inducement (a) to an accused person by threat (b) or promise or otherwise to make any disclosure or confession, whether such person is under arrest or not.

(a). No inducement of any kind should ever be held out by a Police officer. In one case where an officer told certain persons that he would get them released if they spoke the truth, the Calcutta High Court condemned his procedure, and ruled that no fact thus discovered was admissible in evidence.—Dhurm Dutt Oja, S. W. R., VIII, C. R., 13; see also VIII, 53; IX, 17; S. N. A. Agra, 126, 1863; 127, 1864. See also "Confession," App.

The Agra Court (Unwur 160, 1863) ruled, that confessions under this section can only be used against those who make them. See, however, ss. 24—30, Act I of 1872. *We would draw the special attention of our readers to these sections.*

(*b*). Obtaining confessions by hurt or violence is punishable under ss. 330, 331, Penal Code.

The confession of a prisoner, not uttered in the presence of a Magistrate, is admissible in evidence, when the fact discovered is one which, of its own force, independently of the confession, would be admissible in evidence. Choda Atchenah, 3 Mad. Rep., A C., 318.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

Police not to record statement or confession.

121. No Police officer shall record any statement or any admission or confession of guilt, which may be made before him by a person accused of any offence:

Proviso.

Provided that nothing in this section shall preclude a Police officer from reducing any such statement or admission or confession into writing (*a*) for his own information or guidance, or from giving evidence of any dying declaration (*b*).

(*a*). See ss. 159 *et seq.*, Act I of 1872, as to how and when these notes may be used; also ss. 24—30.

(*b*). A dying declaration should be proved by the evidence of persons present who heard it and are cognizant of the time when and manner in which it was made.

In determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration, the Court ought to direct its attention to the point whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot speak of their own personal knowledge to such declaration should not be admitted; and in deciding whether the accused is guilty of the charge of murdering the deceased declarant, the Court should confine itself to inquiring into the facts, which occurred on the day of the murder. Tahir Mollah, W. R., X, Cr., 1.

The Police should have dying declarations recorded by any one present who can write, and witnessed by three or four respectable persons in no way connected with the Police Department.

If there is evident fear of a man dying before witnesses not connected with the Police Department can be summoned, then the Police may record the confession for their own guidance and satisfaction, but no effort should be spared to get witnesses, not Police.

CH. X. ss. 121, 122.

The Police should, in these cases, always give immediate notice to the nearest Magistrate, in order that, if possible, he may attest it before death, but they should not risk waiting till his arrival. Panj. C. 18 of 1861.

Facts discovered from confessions or statements should be deposed to thus :—"from information received," &c., but the confession or information not recorded as it is hearsay.

Where discoveries made owing to information received from the accused are "facts" to which the Police Officer will be able to depose, so much of the information given by the accused as led to the discovery of these "facts" will be received in evidence against him. Res. Gov., W. P., 767 A, 1861, para. 94.

Powers of Magistrates to record statements and confessions.

122. Any Magistrate may record any statement made to him by any person, or any confession made to him by any person accused of an offence* by any Police officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence,† and such confessions shall be taken in the manner provided in sections three hundred and forty-five and three hundred and forty-six, and shall, when recorded, be forwarded to the Magistrate by whom the case is inquired‡ into or tried.‡ No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect :—

"I believe that this confession was voluntarily made."

(Signed) A. B.,

Magistrate.

* S. 141, n.

† Ss. 332—334.

‡ S. 4.

See ss. 24—30, Act I of 1872.

C. P. Bk. C. O. XIII of 1872 directs that when accused persons are brought to the Court by their captors, they should be handed over to the Police, whose duty it is to guard under-trial prisoners. When the first examination of the accused is being recorded, none of the Police who were concerned in his arrest, or procuring his confession, should be allowed in or near the Court, and if accused should desire to make a confession further on during the proceedings, such Police should be removed from the Court to such a distance that they can neither see the accused nor hear his defence.

When the whole of the evidence has been concluded, the prisoner whose confession or answer has been taken at a previous stage should again be distinctly asked what he has to say, and his answer then given be recorded.

A Magistrate acts without due discretion, when, as a prosecutor, he holds out promises to prisoners as an inducement to confess. Ramdhun Singh, W. R., I, 24.

A Deputy Magistrate should not act as Magistrate in a case in which he is himself the prosecutor, and take confessions of prisoners before himself. III, 29.

To give weight to confessions of prisoners there should be a judicial record of the circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were free agents. Kodai Kahar, V, 6.

The whole, and not part only, of a prisoner's confession must be taken in order to his conviction. Chokoo Khan, V, 70; and Sheikh Boodhoo, VIII, 38.

It is only when properly made to the Magistrate that the confession can be used as evidence against the prisoner. The mere standing by of the Magistrate, when the confession is being made to the Police, is not sufficient. Domun Kahar, XI, 82.

The Police must be taught to rely entirely on evidence; a confession made to them is worthless on the trial, and is often made purposely to throw them on the wrong scent. C. P. XXXIX of 1863; so also Oudh Manual.

Copies of all valuable confession or confessions inculpating accomplices to be sent to Central Police office, Lahore. Panj. Pol. Cir., p. 75.

Investigation by Police.

123. If the person arrested appears from the information obtained to have committed the offence charged, and the offence* is not bailable,† the officer in charge of the Police Station‡ shall forward him under custody to the Magistrate§ having jurisdiction, and shall bind‖ over the complainants, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary, to appear on a fixed day (*a*) before such Magistrate (*b*), and to remain in attendance till otherwise directed.

* S. 14[illegible] n
† Sched. IV, c. 5.
‡ S. 137.
§ Chap. VI.
‖ S. 130.

(*a*). An early date is to be fixed, and not one like a month hence—Bheem Manjee, Cal. S. W. R., VI, C. L., 52.

CH. X. S. 123.

(*b*). The practice of District Superintendents examining witnesses sent up under this section is irregular. Such witnesses should go before the Magistrate themselves, and not be taken by the Police elsewhere—C. P. Bk. C. O. III, 1866.

The Oudh Manual inculcates a contrary practice. Witnesses and Charge Sheets are to go first to the District Superintendent, who will carefully scrutinize the Charge Sheet, and if it is all complete and correct send it on.

An intelligible plan of all localities to be sent. An outside chullan to be sent with all prisoners; it should contain name of prisoner, list of property with the prisoner, &c., as well as the date and hour of arrival at the Police thannah and departure therefrom, and any remark as to destination and delivery of prisoner. The officer at each thannah through which the prisoner passes will examine this chullan, certify if all is correct, but if any thing wrong, note the same on the chullan and write to the forwarding station.

Evidence for the defence should be sent up, where possible, with the prisoner.

Two slips should accompany the Charge Sheet; one in English and one in vernacular: both should be returned filled up from the Court to the District Superintendent, and the vernacular to go back to the original Police station.

The first blush story of a heinous crime should always be given. Oudh Manual.

When any subordinate Police officer has made any investigation (*c*)* under this chapter, he shall, if so required by the officer in charge of the Police Station,† submit a report of such investigation* to him; or he may do so without such requisition; and the officer in charge of the Police Station shall then proceed as if he had made the investigation* himself (*d*).

* S. 4.

† S. 137.

(*c*). The investigation of the Police Officer, as it proceeds, should be recorded daily in a Special Diary, and a copy of it sent to the District Superintendent of Police. With the accused should be sent what is called Charge Sheet A. This, together with the Special Diaries, relating to the charge, should be ready for production before the Magistrate whenever called for by him.

This Charge Sheet will of course be prepared by the Officer making the arrest, whenever the inquiry has been completed or so far completed as to reveal the leading facts of the case. When inquiry is *per contra* so imperfect as to leave it doubtful whether the reasonable suspicion on which the accused was arrested will be capable of confirmation or no, and yet that reasonable suspicion has not been removed at the expiry of twenty-four hours, it is incumbent on the Officer in charge of

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the Station to forward his prisoner with a short despatch stating the charge and the grounds of suspicion on which arrested, and which are under investigation. The District Superintendent, or Head Police Officer in attendance on the Magistrate, will draw up a supplementary or intermediate Charge Sheet, with which to adduce the prisoner before the Magistrate, and on which he should obtain an order for the detention of the accused, pending the investigation then being made by the Mofussil Police.

CH. X. s. 123.

Charge Sheet A, N. W. P.

The Charge Sheet prepared at the Police Station is the form of Report adopted by the Local Government, as prescribed in s. 112, and on completion of the enquiry, the Officer in charge of the Station will fill up the form and forward the same as the report of the arrest and of the proofs of guilt obtained by his investigation. On receipt of this, the prisoner will again be brought up by the District Superintendent or the Head Police Officer in attendance, together with the witnesses and parties to the trial.

It is not intended that every person who can speak to the case is to be sent in, and the practice of sending in superfluous witnesses is strongly reprimanded, both in the N. W. P. and in the C. P. (Bk. C. XIII of 1866); in the latter, Magistrates are directed to note such action on the part of any constable, and to send information of it to the District Superintendent of Police.

So also Bk. C. IX of 1866. Two witnesses to prove one single fact are often sufficient where prisoner admits anything before the Police. Witnesses to prove the truth of such admission need not be sent unless summoned. Mere hearsay witnesses never to be sent, nor witnesses to bad character, unless the charge is that of being a bad character.

When an unnecessary witness is sent in, District Superintendent should inform Magistrate that he may be discharged at once, and should warn his subordinates against the recurrence of such an error.

Central Province Rules.

P. C. VIII of 1871 directs: Whenever an accusation is made against the Police at any post of oppression, the first stage in the investigation should be to remove them to another and distant post, replacing them by men who can have no interest in hushing up or concealing their practices; an immediate report, with full details and an account of action and result of inquiry taken by the District Superintendent, to be forwarded to the Inspector-General of Police.

Bk. C. X of 1870. With Charge Sheet A in murder case will be sent a plan showing position of body when found, and premises or neighbourhood in full detail. Village putwari may be employed to draw intricate plan. (So also, in dacoity, robbery, heavy burglary in dwelling-house when plans are likely to assist). When plan is sent, name of person prepared to evidence its accuracy to be sent too.

Bk. XIV of 1866.—Crime in each village to be serially numbered.

For Oudh and Panjab Charge Sheet, see App. "Charge Sheet."

No. of Charge

Complainant's name

Accused's name

Charge

Witnesses

By whom arrested

Property found

Instrument or weapon discovered

Admitted to Bail

FORM OF CHARGE SHEET, A.

_____ *District.*

Charges taken at *Police Station on the* *day of* 187

1	2	3	4	5	6	7	8	9	10		11	12	13	14	15
No. of Charge.	Date and hour brought to Station, and by whom.	Name, address, and occupation of person charged.	Charge.	Person charging, name address, and occupation.	Witnesses' name and address.	Taken into custody, by whom and at what hour.	Property found on person or elsewhere, and by whom.	Instrument or weapon by which crime committed.	*At the Station House.*		Signature of Police Officer taking the charge.	Number of charge.	Magistrate before whom the charge is brought.	Charge how disposed of by Magistrate, and what offence proved.	Remarks by Magistrate.
									Forwarded under custody.	Or hour admitted to Bail.					

Lower Bengal Police Rules about Charge Sheet A, are as follows :—

On the receipt of a Charge Sheet in Form A, the Sub-District Police Officer must at once submit the same to the Magistrate having jurisdiction, and any changes or alterations that are necessary must be made by the Magistrate and not by the Sub-District Officer.

* * * * *

III. The charges which should be entered in Form A are :—

Firstly.—All cases cognizable by the Police, in which particular persons have been charged, in which arrests have been made, and the accused sent before a Magistrate.

Secondly.—All such cases which the Police believe to be true, and in which the offenders have evaded arrest or absconded after arrest.

IV. It will often happen that on a serious charge being made to a Police Officer, he immediately arrests the accused, but subsequently discovers that there is no foundation for the complaint, or that it is so much exaggerated, that the offence which has been really committed proves not cognizable, and he releases the accused on bail. This charge, must not be entered in Form A, because the charge has not been proved against the accused. See for such cases, note, s. 114.

* * * * *

XIII. There are many cases preferred at Police Stations in which charges which are not cognizable by the Police are so interwoven with charges that are cognizable, that nothing less than a judicial inquiry can satisfactorily determine which part is true and which part is false. If, however, the Police Officer who makes the inquiry considers that part of the charge which is cognizable well founded, he should send the accused up for trial, and report it in A Form. But, on the other hand, if he considers the cognizable part of the charge as not proved, and the non-cognizable part as proved, he will refrain from arresting the accused, and report the case in D Form.

XIV. For instance, if a charge of highway robbery is made against a person, and on investigation it is proved that an assault was committed, and there be no proof of the robbery, the case will be reported in Form D, as the cognizable case which the Police Officer went to investigate is false: with regard to the assault, either the Magistrate may, if he think proper, summon the accused, or the aggrieved person can make his complaint before a Magistrate.

XV. As regards the proper manner of filling up Form A, the following instructions are issued. In column No. 1 must be entered the number of the charge.

XVI. Charges should be numbered with reference to the order in which they have been made during the year,—that is, the first charge accepted after midnight of 31st December 1872 should be entered as No. 1 of 1873, and so on consecutively, until the entry of the last charge accepted up to midnight of 31st December of 1873 closes the series for that year.

XVII. The first accepted charge of the next year again commences No. 1; care of course must be taken that the same number entered

Charge Sheet A, Bengal.

CH. X. S. 123.

in that portion of the Form which is sent to the Magistrate is also noted in the counterfoil of the Form retained at the Police Station.

XVIII. The importance of numbering cases carefully will be apparent when it is considered that it is by the number that any case will be afterwards identified in any other Form. As, for instance, in a case of theft or burglary a charge marked No. 1, A Form, will be entered No. 1 in Register of Property Stolen and Recovered.

XIX. Or, if the offenders accused in Form A, No. 2, have absconded before the Police could apprehend them, or have escaped after sentence, then the case would be entered in Form V, Register of Absconded Criminals and Escaped Offenders, as case No. 2.

XX. Any mistake, therefore, in the entry of the charge in the first instance in Form A will lead to confusion in all the subsequent entries in other Forms.

XXI. In the second column should be entered the number of the first information report of the case; the month should also be given as "No. 1 of January," or "No. 7 of February."

Charge Sheet A, Bengal.

XXII. In the third column of the Form should be entered the date and hour when the charge was first made at the Police Station, and the name of the person who made the charge. It must be clearly understood that it is the name of the person who *first* brings the charge to the notice of the Police that should be entered here, and that such person need not necessarily be the prosecutor, or in any way interested in the case. In many instances the village chowkeedar or the servant of the zemindar is the informant.

XXIII. In column 4, the name, address, and occupation of the person making the charge is entered. The necessity of names of persons charging being fully and carefully given is too obvious to need remark.

XXIV. The same observation applies to the entry of address and occupation, as it is very often by these latter entries that persons of similar names can be distinguished from each other.

XXV. In column 5 the names of the witnesses and their address will be entered,—that is to say, the names of the witnesses from whom recognizances have been taken to appear before the Magistrate, and not of all the witnesses examined by the Police during investigation.

The security bonds so executed should, unless there be reason to the contrary, be attached to the charge sheet. Against the name of each witness the facts which he attends to prove should be briefly noted. The names of witnesses from whom recognizances have not been taken should not appear, except witnesses to house-search, who are specially exempted from attendance unless summoned by the Magistrate (section 125, Code of Criminal Procedure). The names of these witnesses should be entered in red ink.

XXVI. In many cases complainants mention the names of about 20 or 30 people as witnesses; it will be the duty of the Police Officer who forwards the charge to enquire into complainant's statements as regards

his witnesses to make a distinction between those who have actually witnessed the offence or who in any way can give important testimony, and those who can give merely hearsay evidence. Police Officers very often bind over 6 or 7 witnesses to appear before the Magistrate and give evidence on a point where 2 or 3 would be amply sufficient, as regards, for instance, identification of stolen property or weapons found.

XXVII. In column 6 the charge is to be entered. This should be done clearly and fully, but without any needless reiteration, as nearly as possible in the language of the Section and Act under which it falls. The Section of the Act under which the charge comes should be given. It will show that the Officer fully comprehends the exact nature of the charge preferred.

XXVIII. It must be clearly understood that the charge the Police Officer considers to have been established before him must be entered in this column; it will very often happen that the charge originally made by the complainant is not the same as that established before the Police. A case reported to the Police as a dacoity may, on investigation, turn out one of house-breaking; the latter crime will be entered in the column.

Theft in a house when attended with trespass, falls under s. 451, 454, or 457, and not 380, Penal Code. The number of the section providing punishment for an offence should be given, and not the number of the section defining the offence.

XXIX. The hour at which accused was arrested and the name of the Officer who made the arrest will appear in column 7; under s. 152 a Police Officer cannot, under any circumstances, detain an accused person longer than 24 hours. This limit of time, however, counts from the hour in which the accused was taken into custody by the Police and has no reference to the time such accused person may have been in custody of others, as for instance, in those cases where an offender has been arrested by the village chowkeedar or the injured person. Officers in charge of Districts cannot exercise too close a supervision over Police Officers with regard to their strict adherence to s. 124.

Persons detained in custody on the authority of the Police are, in law, in Police custody.

XXX. If the offence reported in Form A is one against property, and property of any kind has been found, the person on whom such property was found, with the names of the finder, should be distinctly specified in column 8. All these particulars may have an important influence on the ultimate issue of the case; any facts discovered at the outset in a case will naturally have great weight with the Magistrate, as they are less likely to be the result of collusion of parties, or suborning of witnesses, than circumstances which may come to light afterwards.

XXXI. These remarks apply with equal force to entries in column 9, where the name and description of any weapon that may have been used should be clearly specified.

XXXII. In column 10 will be entered the names of all persons charged by the complainant with having committed the offence.

XXXIII. In column 11 will be entered the names of the persons sent up for trial in custody of the Police. The usual residence of these persons should also be accurately entered after careful inquiry, for communication, in case of conviction, to the officer in charge of Jail, who will, on expiry of the sentence, enter the information in the notice of release. (See rules regarding released convicts.) When a prisoner sent up for trial is known to be a desperate character, or an old offender, the fact should be separately reported, that the Court Officer may bring it to the notice of the Magistrate after conviction. In column 12, the names of persons who are released in bailable offences and required to appear before a Magistrate.

The bail bonds (Police Form No. 61) should be attached to the charge-sheet, and a day should be noted in them.

XXXIV. In those cases where the Police release a person on bail, and in which they consider the charge well founded, it is necessary that, a certain day should be mentioned for the accused's appearance before the Magistrate, under s. 157.

XXXV. In column 13, the signature of the Officer who has taken the charge should be inserted or attached.

Charge Sheet A, Bengal.

XXXVI. The two last columns are left blank, to be filled up by the Magistrate when the case is disposed of.

On the receipt of the memo. to be furnished by Court Inspector informing the officer in charge of the Police Station of the result of the trial and forwarding copy of any remarks the Magistrate who tried the case may have made regarding the Police investigation, the last two lines on the counterfoil should be written up.

Police Officers must be careful not to give in Form A reasons for accepting charges.

In cases where the officers of two or more Police stations have jurisdiction in respect of the same offence, and the complaint is laid simultaneously at such stations, the Police officer should apply for instructions before submission of the final report; so also when complaint is laid in any two districts regarding an offence which is cognizable in either district (section 114) a final report must be submitted in one district only.

This Form (A) should not be sent in until the completion of the inquiry, and should be transmitted by the readiest and quickest means of communication. It should be addressed to the Police Officer in charge of the Sudder Station or Sub-District, or officer acting in their behalf, and not to the Court Inspector.

The Police Officer in charge should send these reports at once to the Court Inspector, who will lose no time in bringing the case to the notice of the Magistrate.

At Sub-Districts where there is no resident Police Officer in charge, Form A will be submitted from the Police Station to the Court Officer. Superior Officers of Police have no power to return, for further inquiry, or to detain, charge-sheet once submitted.

This Form, as well as Forms B, C, and D, will be kept in the Magistrate's Office with the records of the case, and will not be returned to District Superintendent or Sub-District Officer.

BENGAL POLICE _____ DISTRICT.

A FORM.

Charge Sheet of a Case reported at _____ *Police Station, dated the* _____ *of* _____ 187 .

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	No. of Charge.	No. of first information.	Date and hour complained at Station, and by whom.	Name and address of complainant or person charging.	Name and address of witnesses.	Charge established before the Police.	Date, hour, and by whom taken into custody.	Property found on person and elsewhere, and by whom.	Weapons or instruments found connected with the crime.	ACCUSED PERSONS			Signature of Police Officer taking the charges.	Crime established before Magistrate, and how disposed of on trial.	Remarks by Magistrate.
										Named by complaint.	Sent up in custody.	Sent up on bail for trial.			

No. of Charge

Date of Charge Sheet

No. of first information

Date of first information

Complainant

Witnesses

Crime established before Police

Name of Arresting Officer

List of property found, &c., &c.

Persons charged

Person forwarded under custody

Persons admitted to bail

Crime established before Magistrate

Signature of officer taking the charge

Result of trial

Charge Sheet A, Bengal.

(*d*). The Oudh Government, in their Pol. C. O. 18 of 1870, direct that when any Magistrate (not being the Magistrate of the district) shall comment on the proceedings of the Police in any case before him, he shall forward his remarks to the Deputy Commissioner for information and orders.

In the event of the District Superintendent of Police desiring to make any rejoinder to remarks made by a Magistrate on the proceedings of the Police, he shall address his observations to the Deputy Commissioner, and on no account to any other Magistrate.

Accused not to be detained by Police more than twenty-four hours without special authority.

124. No Police officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable (*a*); and such period shall not, in the absence of the special (*b*) order of a Magistrate, whether having jurisdiction to inquire* into or try* the case or not, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court (*c*).

* S. 4.

(*a*). This section does not authorize a Police Officer's detaining a prisoner for a single hour longer than is necessary, and the Calcutta High Court has held that the *onus* of proving the necessity of such detention will rest with him. (Sheo Prosonno Ghosal, S. W. R., VI, 88.) At the expiry of twenty-four hours the prisoner must either be forwarded to the Magistrate or discharged. In another case the same Court held that this detention referred only to a continuous detention of more than twenty-four hours. (Indrobee Sahây, S. W. R., I, 5.)

On the point of detention the Calcutta High Court (Behary Sing and others, S. W. R., VII, 4) have ruled that where a Police Officer does not himself make the arrest, but directs the neighbours to take care of a man, it is as much detention under arrest by law as if the Police Officer had made the arrest himself. The Madras High Court also ruled that, where a Police Officer told by letter a person to attend and sent two constables to attend him on the road for the purpose of, as it was alleged, preventing his speaking to any one, the prisoner had been under arrest and detention from the time that the constables met him.

The Code does not state where the prisoner should be kept during these twenty-four hours. The Calcutta High Court, in the case of Behary Sing quoted above, direct that he should be sent immediately to the officer in charge of a Police-station and detained in his custody.

(*b*). Circumstances may exist in which a special order of the nature contemplated under this section may properly be passed, for instance, if in the case into which the Police are inquiring the suspected or confessing parties have voluntarily offered to conduct the police to a place where the stolen property will be found, and such offer cannot be carried into execution within the limited period of twenty-four hours, the power which this section confers on a Magistrate may be rightly exercised.

To return accused persons to the Police that they may be forced to give a clue to the stolen property is to abuse the provision of this section with a view to the breach of the instructions of s. 120.

(*c*). It often happens that Police cases are brought before a Court at a late hour in the day. This generally points to some irregularity. The day fixed by the Police for the witnesses to appear should allow them sufficient time to make preparation in the way of food, clothes, &c., from their houses before starting, and for making such a journey as will enable them to appear in Court by the time fixed for its opening. This time should always be mentioned in the recognizances. If witnesses do not appear by that hour, and reasonable time has been given them, their recognizances should be forfeited; and if they can appear, the Police can have no excuse for not being ready with the prisoner and the Charge-sheet by that time. Thus, cases should never come in at a late hour of any day unless it be prior to the day fixed for the witnesses to appear (Bk. C. 13 of 1867, C. Prov.). A prisoner brought when the Courts are open must be brought before the Magistrate at once; if the Magistrate is unable to try it, he must pass an order for the prisoner's detention in the lock-up, so also when the case against the prisoner is not complete. Prisoners arriving after the Courts have been closed must be placed in the lock-up attached to the Sudder Police Station. Magistrates of Districts should insist on cases sent in by the Police being brought before Magistrates having jurisdiction by the hour at which witnesses are pledged to attend. (Panj. Bk. C. III of 1871.)

If the investigation* has not been completed within twenty-four hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forward the accused person to the Magistrate† having jurisdiction, with a statement (*d*) of the offence‡ for which he has been arrested (*e*).

* S. 4.

† Chap. VI.

‡ S. 141, n. (*a*).

(*d*). This will be in the Charge-sheet, see notes, ss. 114, 117, 125.

(*e*). The following orders apply both to Oudh, the Panjab, Central and North-Western Provinces. "When a case is incomplete and information deficient, or witnesses have not arrived, or cannot be procured within the limit of twenty-four hours, the Officer prosecuting will send up the prisoner to the Magistrate with a Remand-sheet, stating his reasons for requesting the same, and the period for which such is solicited. The Magistrate will then order the prisoner to be confined in the lock-up, or otherwise as he may think fit, recording such order on the Remand-sheet, which will then be returned to the District Superintendent.

A Magistrate authorizing detention (*f*) under this section shall record his reasons for so doing.

(*f*). Prisoners remanded to the lock-up should be sent under formal warrant, in which a date for their production before the Court should also be entered.

Offenders brought before a Magistrate, unless tried and sentenced then and there, or discharged on bail or recognizances, should be made over to the lock-up and entered in the Register; they are on no account to remain at large in any portion of a Police-station—I. G., N. W. P., dated 20th July 1864. When sentenced to imprisonment, the Court Inspector should obtain a warrant from the Magistrate, enter a note of

CH. X. ss. 124, 125.

the same in the Register, and deliver the prisoner with the warrant to the Jail Darogah after taking a receipt from him for them.

Lock-up Register.

A Police Circular, N. W. P., declares the purports of the Lock-up Register are:—

1st.—To furnish proof that every person brought up before the Magistracy, or delivered into their custody by a Magistrate, has been discharged from custody on legal authority.

2nd.—To provide proof of previous convictions when such may be desirable, or required by a Magistrate, with regard to s. 75 of Act XLV of 1860.

No interlocutory orders should be entered in this Register. Every person brought up before the Magistrate by the Police on charges taken by them, and every person committed to the custody of the Police by a Magistrate, should, at the time of arrival from Police-station or of receipt from the Magistrate, be entered in the Register. The only further information entered should be that connected with his discharge either by imprisonment in the jail, or payment of fine on conviction of crime, or by release on acquittal, or on furnishing security. A provisional order of release from Hawalat should not be entered, as this concerns the Judicial not the Police Officer; but when ordered to be released from custody in consequence of having provided the Magistrate with security, or by having filed personal recognizance, this order will be entered, and the initials of the Magistrate obtained in attestation of such order.

To guard against persons being detained without legal warrant, the Lucknow Bk. Cir. 3 of 1869 directs that all Deputy Commissioners are to examine the Hawalat Register on the 1st of every month, and to satisfy themselves that there is no one imprisoned in the Hawalat without legal warrant. They should make a point of visiting the Hawalat at least once a month.

Officers in charge of jails should satisfy themselves that they have legal warrants for all prisoners confined by them. A few months ago the Seetapore Jail received batches of prisoners by docket only. Forms of warrant have been carefully prescribed, and officers in charge of jails should refuse to receive prisoners for whose confinement they have no legal authority.

If such order be given by a Magistrate other than the Magistrate* of the District or of a Division† of a District, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.‡

* S. 35.
† S. 40.
‡ Ss. 37, 41.

Procedure of Police in the case of deficient evidence.

125. If it appears to the officer in charge of the Police-station§ that there is not sufficient evidence‖ or reasonable ground of suspicion to justify the transmission of an accused person to the Magistrate, such officer shall release the accused person on bail,¶ or on his own recognizance,** to appear when required, and shall submit a report (*a*) of the case for the orders (*b*) of the Magistrate††

§ S. 137.
‖ S. 4, n. (*d*).
¶ Ss. 160, 388.
** S. 204.
†† Chap. VI.

having jurisdiction. Such report shall be submitted through the superior officer of Police, mentioned in section one hundred and seventeen, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.* * S. 4.

(*a*). This report will be sent up in the Form B mentioned in the notes to s. 117.

(*b*). The Oudh Government, in their Police Circular 23 of 1870, directs that when a report of a crime has been ordered by the Magistrate to be struck off the Police Registers, the entry in the District Superintendent's English Diary should be at once cancelled, and a note of Magistrate's order made in the Diary; intimation should also be given to Station Police Officer to enable him to make a similar note in the station and village registers of crime; and the North-West orders lay down strictly that no case can be struck off by the Police until they have received an express order to that effect from the Magistrate.

The Chief Court directs Magistrates to permit no case to be expunged from the register of offences until they are satisfied that the offence reported was not actually committed. (Panjab Bk. Cir. VII of 1870.)

Bengal Police instructions for charges, in which accused are not sent up for trial under this section are, as follows :—

Offences reported at Police Stations, that are not cognizable by the Police, are not entered in this Form. A charge of a cognizable offence may be so palpably false on the face of it, that a Police Officer may consider himself justified in immediately rejecting it, in which case he enters it in Form D.

Or, after making inquiries into the charge, the Police Officer may come to the opinion that it is false; in this case also he enters it in Form D.

* * * * *

If the Police Officer, to whom a charge of an offence, part of which is cognizable and part not cognizable, is preferred, is of opinion that the cognizable part of such charge is not well founded, he should decline to act on it, and enter it in Form D.

The instructions given regarding the filling in of the first four columns of Form A—see notes to s. 123—apply equally to Form B. Column 5 corresponds with column 6, A form.

In column 6 will be entered the amount of property stolen in true cases,—that is to say, the amount reported by complainant as having been stolen, and if the Police, after inquiry, consider less to have been stolen, such less amount should also be entered; the Magistrate will decide whether the larger or less amount be entered in the Register.

In column 7 will be entered the names of the accused who have not been arrested, and in 8 those who have been arrested and released on bail or recognizances. The total of these two will show the number charged.

It must be noted that the difference between the bail and recognizance bonds, taken from persons released and reported in Form B, and those released and reported in Form A, is that the former are to appear if called upon by the Magistrate, and the latter on a fixed day. Police Officers must bear in mind that no person who has been apprehended shall be discharged except on bail or on his own recognizance, or under a special order of a Magistrate (*see* s. 132), and

Charge Sheet B, Bengal.

CH. X. s. 125.

that only a Magistrate can release a person from his engagement, whether such engagement be in the form of a bail or recognizance. Information on this point will be conveyed to Officers in charge of Police Stations by Court Inspectors in the Memoranda showing the result of the case for communication to the persons concerned, and it will be the duty of the former to enter the Magistrate's orders on the counterfoil.

Bail bonds taken under s. 125 should be in Form 61, and should be sent in with the B form. No particular form of recognizance bond has been prescribed by law. The following form may, therefore, be adopted:

I , of , do hereby bind myself to appear at in the Court of , when required to answer to a charge of brought against me by of ; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees.

In the last column a clear statement of the case, and the evidence, *pro* and *con*, should be given, to enable the Magistrate to judge whether the Police have acted properly in not transmitting the accused person for trial.

In cases where the Police consider the charge unfounded, and report it in Form B, but in which the Magistrate may consider that the Police have acted erroneously, that in fact the charge is well founded, and should have been reported in Form A, he will, in all probability, order a fresh inquiry. The Police are bound to enter into such inquiry with as little delay as possible.

If, on the completion of such inquiry, the Police Officer sees reasons to consider the charge well founded, he will report it in Form A. If not, he will simply report that he still considers the charge, after re-investigation, untrue. There is no necessity for sending a second report in Form B. If the Magistrate does not order any re-investigation, but directs the accused to be sent before him for trial, Form A will be sent with the accused.

On the disposal of all cases reported in Forms A, B, C, and D, the Court officer will show the Magistrate's register to the District Superintendent in the Sudder Station and to the Officer in charge at Sub-division.

At Sub-divisions the Court officer will also despatch daily to the District Superintendent a memorandum in Form No. 26, showing the result of each case disposed of during the day.

The following general rules apply equally to reports in Forms B, C, and D:—

I.—The statement in the last column should be so complete as to render reference by the Magistrate to the special diaries unnecessary.

II.—Each report should bear the signature of the Officer who held the inquiry.

III.—It is competent to the District Superintendent or Sub-district Officer to return any of those reports for fresh inquiry, and to direct the substitution of Form A, B, C, or D, for the form submitted.

IV.—Form B, C, or D, so superseded, should be cancelled by ruling two lines across the counterfoil, and inserting the number and description of the form by which the cancelled form has been superseded.

V.—Reports in these Forms should be submitted to the Officer in charge of the Sudder Station or Sub-district for transmission through the Court officers to the Magistrate and not to Court officers at Sub-Districts direct. (Rules for A Form, paragraph 8.)

VI.—A copy of a statement of the cases in the last column of the form will be made on the counterfoil recorded at Police-stations.

VII.—If fresh inquiry is ordered either by the Magistrate or superior officer of Police, no second final report form will be submitted, unless the result of the second inquiry differs from the result of the first inquiry.

VIII.—The final order of the Magistrate will, in each case, be forwarded to the Police-station by the Court Officer.

For Forms C and D, see App., "Charge."

BENGAL POLICE, _____ DISTRICT.

B. FORM.

Final Report of a Case reported at _____ Police-station, in which the charge against the accused was not sufficiently proved to warrant the case being brought up for trial.

1	2	3	4	5	6	7	8	9	10
Date and No. of Final Report.	No. of first information of the case.	How and by whom brought to Station.	Complainant or informant's name and address.	Charge or complaint.	Amount of property said to have been stolen.	NAME AND ADDRESS OF ACCUSED PERSONS. Not arrested.	NAME AND ADDRESS OF ACCUSED PERSONS. Arrested and released.	Signature of Officer who investigated the case.	Course adopted by the Police, and reasons for not sending the accused before the Magistrate for trial.

For Oudh and Panjab rules, see App., "Charges."

No.

Date

No. of first information

How and by whom reported

Name of complainant or informant

Crime

Amount of property stolen

Accused not arrested

Accused arrested and released.

Signature of investigating Police Officer

Magistrate's final orders

CH. X. ss. 126, 127.

Daily record of proceedings.

126. A Police officer, making an investigation* under this chapter, shall day by day enter his proceedings in the investigation* in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation,* the place or places visited by him, and a statement of the circumstances ascertained by his investigation.*

* S. 4.

Any Criminal Court may send for the Police diaries of a case under inquiry* or trial* in such Court and may use such diaries to aid it in such inquiry* or trial.* Neither the prisoner nor his agents† shall be entitled to call for them, nor shall he nor they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police officer, who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents (*a*) used for such purposes shall apply to them.

† S. 86.

(*a*). Unless used as evidence, Police diaries should never be put up with the record. The diaries here alluded to are the special diaries. While investigating a case, the Police officer daily records what steps have been taken by him during the day, and at evening forwards a copy of the diary to the District Superintendent; a fresh special diary is used for each case.

See ss. 159, &c., Act I of 1872 *et seq.* The documentary evidence law will be found in the same Act, ss. 61 *et seq.*

See App., "Special Diaries."

Report of Police officer.

127. The investigation‡ shall be completed without unnecessary delay, and, as soon as it is completed, the Police officer making the same shall forward to the Magistrate§ having jurisdiction a report in the form (*a*) prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case, and shall also send to such Magistrate any weapon (*b*) or article which it may be necessary to produce before him.

‡ S. 4.

§ Chap. VI.

(*a*). The form thus sent in will be, if the prisoner be sent up for trial either in custody, or on bail or recognizances, Form A, *vide* note, s. 123; but if the complaint be not sufficiently proved to warrant the case being brought to trial, then Form B, *vide* s. 125 n.; if the complaint be false as regards the person charged, but true as to the commission of the offence, then Form C, unless the real offender be detected (Form A); and if the complaint is false and no cognizable offence been committed, then Form D—Lower Bengal Rules. In the North-Western Provinces, only two Forms are used, A and B; A for cases in which Form A would be used in Bengal, and Form B for all others. The fact of *not being bound* to send up witnesses for the defence in cases that are likely to go to the Sessions is not intended to debar Police officers from hearing what any witnesses, produced by an accused person, have to say; such evidence may sometimes cause a reasonable ground for belief that the case cannot be proved, when they will act as laid down in s. 125.

In sending up cases, the names of witnesses for the defence, named by the accused, will be invariably entered in the Charge-sheet, and a note also, as to whether their statements have been heard or not—Oudh, 37-20 of 1871. C. P. Bk. Cir., No. III of 1870, directs that D. S. are not to detain Charge-sheets in their office, nor alter, correct, nor comment on them, except in extraordinary cases. D. S. cannot, nor can any but the officer making inquiry, admit accused person to bail.

(*b*). By Agra S. N. A. 8 of 1864, it is held to be the duty of Judicial Criminal Courts to take all measures for identity of any article committed to their charge by affixing thereto, when possible, the seal and signature of the Court, or fastening such paper to it as will certify to its identity: bullion, coin, or jewels should go to the Treasurer, cattle to the Pound, and miscellaneous property to the Malkhanah. For the safe custody of Malkhanah property only the Police will be responsible. Responsible officers should always be placed in charge of the Malkhanah.

The Police officer shall state whether the accused person has been forwarded in custody, or has been released on bail* or on his own recognizance.†

If the accused person be detained‡ (*c*) in custody, the Police officer shall state the fact and the cause of his detention (*d*).

* Ss. 160, 128, 125.
† S. 204.
‡ S. 124.

(*c*). Oudh C. O. 6 of 1870, directs that sick and wounded prisoners under trial are to be confined in jail hospitals whenever medical treatment may be necessary.

(*d*). When thus brought into Court, the Magistrate will proceed, if it be a Session case under ss. 189, &c.; but if it be a Magistrate case under ss. 203, &c., or 213, &c., according as the case may be a summons or a warrant case. The subsequent action of the Police in the N. W. P. is thus prescribed.

Every person accused or arrested by the Police will be prosecuted through the Police, under the guidance and direction of the District Superintendent, and upon the Police will devolve every duty of maintaining and of securing the attendance of parties cited or summoned on the day of trial.

A Court Inspector should be employed solely on this duty; and should, each day of business, attend the Magistrate's Court, with a sufficient party of Police and officers for the business of the day.

CH. X. ss. 127—130.

To every Court of Justice a Head Constable or other officer of intelligence should be attached. The Inspector should deliver to him all charge-sheets, prisoners, witnesses, and other parties or documents to be produced, and the Inspector himself should be in attendance either in the Court of the Chief Magistrate or in any other Court where a case of grave crime is to be tried. The District Superintendent should himself watch the proceedings in cases affecting the conduct of the Police or the Police administration.

The officer in attendance at each Court will be supplied with an order book.

In the order book he will record correctly every order issued to the Police by the Magistrate presiding, each entry having the signature of that officer in initials.

At the close of the day the Inspector will arrange for delivering into the custody of the Jailor all convicted and sentenced to imprisonment, and for custody in lock-up all left under trial. He will collect the order books from the several officers in attendance at the Courts, and deliver the same into the office of the District Superintendent for distribution or transmissison to the Mofussil Police.

Admission to bail.

* Sched. IV., col. 5.

128. A person accused of any non-bailable* offence shall not be admitted to bail, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him.

But a person accused of any bailable offence shall be admitted to bail,† if sufficient bail be tendered for his appearance before the Magistrate‡ having jurisdiction in respect of the offence.§

† S. 160.

‡ Chap. VI.

§ S. 141, n. (*b*).

If the accused do not answer to his bail, the procedure prescribed by ss. 396, &c., should be followed by the Magistrate.

Bail not to be excessive.

Terms of security.

‖ S. 160.

¶ S. 397, n. (*b*).

129. The bail‖ to be taken under section one hundred and twenty-eight shall not be excessive; and the surety or sureties shall bind¶ himself or themselves under a specific penalty to produce the accused person before the Magistrate on or before a fixed day, and from day to day, until otherwise directed, to answer the complaint.

Complainants and witnesses to execute recognizances to appear.

** Chap. VI.

130. Every complainant and other person acquainted with the facts and circumstances of the case, whose attendance before the Magistrate** having jurisdiction is deemed necessary by the Police officer making the investi-

gation,* shall execute a recognizance† in the Form (F) given in the second schedule hereto, or to the like effect, for appearance before the Magistrate‡ having jurisdiction in respect of the offence on a fixed day.

* S. 4.
† S. 204.
‡ Chap. VI.

If the Court of the Magistrate§ of the District or of a Magistrate‖ of a Division of a District be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry¶ or trial,¶ provided notice be given to such complainant or witness.

§ S. 35.
‖ S. 49.
¶ S. 4.

Such day shall be the day whereon the accused person is to appear, if he has been admitted** to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

** S. 128.

The officer in whose presence the recognizance is executed shall, after delivering to the complainant or one of the witnesses a duplicate thereof, send it with his report†† to the Magistrate‡ having jurisdiction.

†† S. 127, n. (a).

No Police officer shall, except as provided in the next following section, accompany the complainant or witnesses on his or their way to the Court of the Magistrate.

The Calcutta High Court, in the case of Kodai Kahar, S. W. R., V., C. R., 6, has ordered that evidence is to be sent in as soon as it comes to hand. See s. 124, note (*b*), and s. 421, notes.

Complainants and witnesses not to be subjected to restraint.

131. A Police officer shall not subject any complainant or witness to restraint or unnecessary inconvenience, nor require him to give any security for his appearance other than his own recognizance.††

Recusant complainant or witness may be forwarded in custody.

But if any complainant or witness refuses to attend, or to execute the recognizance‡‡ directed in section one hundred and thirty, the officer in charge of a Police-station§§ may forward him under custody (*a*) to the Magistrate‖‖

‡‡ S. 130.
§§ S. 137.
‖‖ Chap. VI.

CH. X.
ss. 131—133.

having jurisdiction, who may detain him in custody until he executes such recognizance,* or until the hearing is completed (*b*).

* S. 130.

(*a*). Witnesses forwarded under arrest in accordance with the provisions of this section should not, unless violent in their behaviour, be sent in irons, but rather as persons arrested by civil process.

(*b*). S. 166, Penal Code, contains the punishment for Police Officers disobeying the provisions of this section.

† S. 187.
‡ S. 35.
§ S. 40.

Police to report apprehensions.

132. Officers in charge of Police-stations† shall report (*a*) to the Magistrate‡ of the District, or the Magistrate§ of a Division of a District, the cases of all persons apprehended within the limits of their respective stations, or detained under section ninety-three, whether such persons have been admitted to bail‖ or otherwise, under whatever law such persons may have been arrested.

‖ Ss. 125, 128, 160, 204.

(*a*). Either by means of the daily or the special diary.

Discharge of person apprehended.

No person who has been apprehended by a Police officer shall be discharged, except on bail‖ or on his own recognizance,‖ or under the special order of a Magistrate (*b*).

(*b*). According to circumstances, a disobedience of orders under this section would render a Police officer liable to punishment under ss. 217, 166, Penal Code, or s. 29, Act V, 1861.

¶ S. 187.

Police to inquire and report on unnatural and sudden deaths.

133. The officer in charge of a Police-station,¶ on receiving notice or information of the unnatural (*a*) or sudden death of any person, shall immediately give intimation thereof to the nearest Magistrate** duly authorized, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation†† (*b*), and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted.

** Ss. 21, 23, 25, 27, 28.

†† S. 4.

For Panjab Rules, see App., "Unnatural Deaths."

(*a*). In India, as elsewhere, sudden deaths may be natural or caused. In both cases the Police are bound to investigate; in the former alternative, when there is no doubt but that the death has occurred in the ordinary course of nature, they are instructed to procure the punchayatnama or sooruthal, and when this has been completed their duty ends. (Panjab, C. O. 1, 1862.) Unnatural and violent deaths are more generally attributable to (1) poison, (2) lethal weapons, (3) self-inflicted wounds, (4) snake-bite, (5) throat-cutting, (6) fracture, (7) crushing in the thorax, (8) rupture or wounding of internal organs, (9) mutilation, (10) beating, (11) burning, (12) torture, (13) strangulation, (14) hanging, (15) suffocation, (16) smothering, (17) drowning, (18) burial alive, (19) rape, (20) infanticide.

Poisoning is in India as perfect a science almost as it was in the days of Catherine de Medici, and the various mineral and vegetable substances used may fairly be counted by fifties. Out of these, Dr. Chevers selects the following as the more frequently employed:—

I.	The preparation of arsenic. Aconite, Nux Vomica, Opium, Lal Chitra, Oleander.	For assassination and suicide.
II	Datura, Gunjah,	Generally for producing intoxication, insensibility or fatuity, but not as a rule for killing, though death often results.
III.	Lal Chitra (for abortion).	Given as medicine in poisonous doses.
IV.	Sulphate of Copper, Arsenic, Snake-poison, &c. (?—ED.)	

The following hints may often supply motive for poison having been administered when the ordinary reasons are wanting:—

Arsenic is given by native practitioners in fever, both intermittent and remittent, as an aphrodisiac, as an alterative in rheumatism, gout, and secondary syphilis, as a wash for skin diseases, more particularly itch. It is also often eaten like opium, or had recourse to by opium-eaters in lieu of their favorite drug. Red sulphide of arsenic is largely used in coloring pillaus, sweetmeats, or the lips, hands, and feet.

Aconite is used in the treatment of leprosy, fever, cholera, rheumatism, offensive breath. It is believed to be the most frequently used of any of the poisons in India.

Nux Vomica is given as an aphrodisiac, and to supplant the habit of eating opium.

Opium is often used in infanticide cases, a piece of it applied to the roof of the child's mouth or smeared round the mother's nipples. In several cases it has been proved to have been administered to children by nurses to quiet children in their charge, and more particularly so by wet-nurses.

Datura. With this every Magistrate in India becomes soon acquainted. It is the poison or stupefying drug of Bengal; it is usually used as a powder, and then mixed in attah, sweetmeats, or any sort of food: suttoo and datura is a very favorite mixture; but the seeds and capsules of the plant are also very commonly administered.

Of unnatural death from other cause.

Death wilfully caused by *snake-bite* may seem novel; but it was well known among Hindu and Mussulman Governments, and specially mentioned by name in their Penal Codes. Well authenticated cases have occurred in Lower Bengal, and in the North-Western Provinces and Panjab. The number of deaths is so great that it is the duty of all Magistrates not to pass over reported cases too cursorily. It may yet be discovered that death by snake-bite is, in many a case, a too convenient return readily adopted by the Police and Punchayuts, to hide facts that would involve unpleasant consequences

Throat-cutting has been called by Dr. Chevers the signature of adultery or unchastity committed by the deceased.

Rupture of the internal organs is very frequent, and more so perhaps in cases where there is no intention whatever to cause death. These cases are always more or less complicated, and call for patient investigation.

Beating to death is a common punishment in Bengal and the North-Western Provinces for thieves and intriguers.

Hanging is often practised on dead bodies in the hopes that the cause of death may be put down to suicide.

Burying lepers alive is still known in these Provinces.

It is, however, impossible to treat this subject here as it deserves, and we would refer the reader in all cases of difficulty and suspicion not to decide without first consulting Dr. N. Chevers's able and instructive work on Indian Medical Jurisprudence.

(*b*). The inquest should always be taken before the body is touched, and the Police report should note the exact position in which it was found, and all concurrent circumstances, such as the condition of the body, clothing and other articles found in or near it, any mark, injuries, position, length, breadth, and depth of wounds, &c., &c. (I. G., N. W. P., 58, 1867.)

Where a body has been identified, no delay should occur in forwarding it forthwith to the Civil Surgeon or Medical Officer appointed to hold the inquest. The body is to be placed in a doolie, well lined with charcoal and sprinkled over with McDougall's disinfecting powder or iron filings (kasis). The cost of bearers, &c., should be defrayed from Government, and each first and second class Police-station to be provided with one such doolie. On no account is the doolie for wounded persons to be used for conveying a corpse.

With the corpse should be sent a native challan containing name and rank of the Police officer who originally despatched it, the sex and caste of the corpse, the supposed time of death, the date and hour of despatch, a full description of the mode in which the corpse was packed and despatched. On arrival at the Sudder this should be translated by some responsible officer and forwarded to the Civil Surgeon, who will return the same after noting the date and hour of arrival at the Sudder Dispensary, condition of the corpse, and the mode in which it was packed. (Pol. C. O., N. W. P., 7 of 1870.) It is perfectly possible, in most cases even occurring at the hottest time of the year, to cause bodies to be sent in by the Police so speedily that they shall arrive in a condition to be examined; and the Court accordingly enjoin on the Magistrates subordinate to them to insist in the first place on the despatch of the body by the Police without more delay than is *absolutely* necessary, the hour and date of despatch being always noted on the *chulan* and *urzee* of the same date.

Next, in order to prevent any delay in procuring coolies along the road, which arises, as the Court fear, from the men who convey the corpse being too often engaged without due remuneration, the Magistrate should strictly order his Police to advance the necessary remuneration and to pay each coolie the usual hire obtaining for a day's work for each stage of ten miles.

Thirdly, the hour at which the body reached and was forwarded from each intermediate Thannah and Chowkee should always be noted on the *chulan*.

On the arrival of the body at the place of residence of the Magistrate, wherever there may be a Civil Surgeon posted to the station, it should be taken direct and without any delay by the Burkundauze in charge of it for examination by that officer, without incurring the delay which now not unfrequently takes place in waiting for the preparation of the formal letter, an *urzee* being sent in along with the corpse addressed to the Civil Surgeon. A duplicate of this *urzee* should be brought in by the Burkundauze and delivered to the Court Inspector, according to which the usual letter of form containing the particulars required by the Court's Circulars, note (c), is to be drawn up and transmitted without delay to the Civil Surgeon.

In the cases of Europeans the inquest *must* always be held by an European officer; if it be a female, under no circumstance shall an examination of the body take place by the Police, and in such cases an officer not below the rank of Head Constable shall remain with or accompany the body to the Magistrate.

The report (*c*) shall be signed by such Police Officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the Magistrate* of the District or to the Magistrate† of the division of a District.

* S. 35.
† S. 40.

(*c*). This report will be much like that in a special diary. If the investigating officer see cause to suspect crime, the inquiry becomes one under s. 127, and special diaries become necessary. In ordinary cases, where the inquiry reaches completion in a few hours, there is no necessity for a special diary; when it is prolonged, or lasts over one day, special diaries should be sent in anticipation of the final report under s. 127, if a crime is detected or under this section if death is from accident or natural causes. In the station diary every thing done by the Police will be noted. (C. O. IX of 1872.)

When there is any doubt regarding the cause of death, the Police officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon (*d*) or other Medical Officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

CH X. s. 133.

(*d*). Once the body has been despatched to the Civil Surgeon, all subsequent communications between him and the Police should pass through the Magistrate. (Agra, 11, 1860).

The following letter should, as a rule, accompany the corpse, but transmission of the corpse, especially when putrefying, should not be delayed if it be not at once forthcoming (Agra, 859, C. D. 1857):—

To The Civil Surgeon of———

Sir,—I have to request the favor of your examining sent to the hospital on the . Be so good as to fill up the columns on the reverse of this letter, and return it to me with such remarks as you may consider necessary, to show clearly your opinion of the cause of

2. All that is at present known of the case is as follows:—

I have, &c., &c.

This report duly filled in should come on to the Magistrate, who will then give necessary orders. Should he consider a *post-mortem* examination necessary, he will send the following letter (N. W. P., 338 A., 1865):—

Sir,—You are requested to hold a *post-mortem* examination on the body of sent herewith, and to furnish a report of your examination in the accompanying form.

N. B.—Death is said to have been caused by

Post-Mortem Examinaiion Report.

External	Liver	Kidneys
Head	Spleen	Bladder
Lungs	Stomah	Womb
Heart	Intestines	Cause of Death.

The Panjab Government, in their Book Circular, No. XVI of 1870, and the C. P. in Bk. Cir., 23 of 1870, give headings for a Medical Report, not as necessitating a tabular statement in reply to every question, but as indicating the points which a Medical Report ought to clear up, and the amount of information as to collateral circumstances which it ought to afford. Often, owing to the advanced stage of decomposition in which a corpse has been found, the distastefulness of the task has been urged as an excuse for not making an investigation. Medical Officers are reminded that no such excuse can be accepted, and that whatever the state of the body, the most thorough investigation must, in every instance, be carried out. Everything upon which the Chemical Examiner's opinion is necessary should be forwarded to him with the least possible delay. (See, further, section 375 note). Magistrates will find in Judicial Commissioner's Circular No. 209, dated 27th July, 1863, an outline of the proper questions to be put to medical witnesses in criminal cases, and they should shape their questions accordingly.

Panjab Bk. Cir. 17 of 1868, and C. P. Bk. Cir. 23 of 1870 direct that, in cases of suspected poisoning by metallic poisons, one pound weight of the liver be sent along with the stomach to the Chemical Examiner, but put up in a separate bottle.

Oudh Bk. Cir. VI of 1869 directs that the head of the corpse of a murdered person which cannot be identified be cut off and preserved in strong spirits or other liquor, after examination by the Civil Surgeon.

It is as well to add a warning word that bodies after natural death have often been wounded, and then produced for the purpose of accusing innocent persons; nay, further, that persons have been murdered for the sole purposes of bringing into trouble zemindars and others. Too perfect evidence is always suspicious in these cases.

The Bengal rules for cases of violent death, &c., occurring in a Subdivision are contained in C. O. No 4970, 1863, and are as follows:—

1st,—That, when the death occurs in the Sudder Subdivision, the body should, in suspicious cases, be forwarded to the Civil Surgeon.

2nd,—When the death occurs in a Subdivision, and there is a Sub-Assistant Surgeon or European Medical Officer attached to it, he should hold the *post-mortem* examination.

3rd,—In a Subdivision where there is only a Native Doctor, whenever the state of the dead body, the distance, the weather, or the state of the roads renders it improbable that the body will reach the Sudder Station in such a condition as to enable the Civil Surgeon satisfactorily to hold a *post-mortem* examination, the body must be sent to the Subdivisional Medical Officer. A copy of the report of such officer will, however, be submitted to the Civil Surgeon, who will make any remarks he may think proper in the margin of the report, for the information of the Subdivisional officer. When the body bears external marks of violence, the Subdivisional officer should, if possible, view the body in the presence of the Native Doctor.

"When, on the other hand, circumstances permit, the body should be sent to the Sudder Station for examination by the Civil Surgeon, and at such examination the Native Doctor or Sub-Assistant Surgeon at the Sudder Station should be present, so that he may be able to attend, if required, at the Subdivisional Court, and give evidence as to the causes of death, in cases in which the absence of the Surgeon on duty would be attended with inconvenience to those under his medical charge."

Dr. Hutchinson, Civil Surgeon at Patna, drew up the following useful hints for the Police in cases of violent death:—

In cases of hanging or strangulation.

1. Note, if possible, before cutting down the body, or removing the strangulating medium, any lividity of face, especially of lips and eyelids; any projection of the eyes; the state of the tongue, whether enlarged and protruded, or compressed within the lips; the escape of any fluid from mouth and nostrils, and direction of its flow.

2. On cutting down the body, or removing the strangulating medium, note particularly the state of the neck, whether bruised along the line of strangulation.

3. Note the direction of the mark, whether circular or oblique.

4. Note the state of the thumbs, whether crossed over the palm.

5. If possible, bring away the materials by which the hanging or strangulation has been effected.

On finding a body in a tank or well.

1. Note any marks of blood about the mouth, or on the sides of the well or tank.

2. On removing the body, carefully examine for, and note any external marks of injury, especially about head and neck.

3. Note state of skin, whether smooth or rough.

4. Examine the hands, and carefully remove anything they may hold.

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S. 133.

In the case of a body found murdered in an open field.

1. Note the number, character, and appearance of any injuries.
2. Should a weapon be found, cover with paper, and seal any marks of blood, and especially note and preserve any adherent hairs.
3. In the case of an exposed infant, note the state of the cord, especially if tied, and any marks of violence.

In a case of presumed murder and burial of the remains.

1. Examine for, and note any marks of violence, about the skull especially.
2. Note carefully any indications of sex; especially bring away a jaw and the bones of the pelvis.
3. If any suspicions of poisoning, bring away (sealed) the earth where the stomach would have been.
4. If the body, presumed to have been murdered, has been burned, collect and bring in any fragments of bones which may be found among the ashes.

In a case of poisoning the following questions have been prescribed by Agra C. O. 21 *&* 24, 1865, Cen. Prov., 1866, *and by Panjab,* 57 *of* 1861:

1. What interval was there between the last time of eating or drinking and the first appearance of the symptoms of poisoning?
2. What interval was there between the last time of eating or drinking and the death of the person (if this occurred)?
3. Did the person move from the place where the first symptoms were noticed? If so, how far did he go?
4. What were the first symptoms?
5. Did vomiting or purging occur?
6. Did the person become drowsy or fall asleep?
7. Were there any cramps or twitching of the limbs observed, or tingling in the skin or throat complained of?
8. Mention any other symptoms noticed.

Oudh Circular, Pol., 1 of 1869, directs that, in cases of poisoning, Magistrates will refrain from summarily releasing the accused. The evidence should be carefully recorded, and on that evidence, and not on mere Police notes, a verdict should be given. Charges of poisoning, which in this country are easily committed, and with great difficulty detected, must be carefully prosecuted. If there be hope of obtaining further evidence, the trial can be deferred.

The report of the inquiry made under this section should be confined to the "apparent cause of death," to the existence of marks of violence or otherwise, and to the mode or means by which such marks seem to have been inflicted. The "Punchayetnamah" framed in some cases travels far beyond these limits, and contains matter of an objectionable character. (H. Ct., N. W. P., No. 103 A., 26th January 1869.)

Bk. Cir. XII of 1869, C. P., directs that Medical Officers should always be allowed access to the record of a case in which medical evidence has been given on their expressing a desire to see it for the purpose of completing their departmental returns.

In the Presidencies of Madras and Bombay, the head of the village may also, in like manner, make the investigation and report to the nearest Magistrate duly authorized (*e*).

(*e*). The Rules for Railway Accidents are as follows:—

In every case of a serious railway accident, the District Superintendent will either at once go to the spot in person, or obtain the immediate order of the Magistrate of the District; and the local officers of Police will conduct the inquiry in concert with the officers of Railway Police.

Magistrates will hold a judicial inquiry into every case in which loss of life occurs, and into all other cases of a serious or dangerous character.

Police Officers and Magistrates will also remember that the special instructions in regard to railway accidents by no means supersede the general law (s. 133 of the Code of Criminal Procedure) requiring an inquiry into cases of unnatural death with the aid of two or more respectable inhabitants of the neighbourhood; on the contrary, this procedure should be most carefully observed in these cases. As the inquiry will generally involve the conduct of English-speaking men, it will be desirable that the persons summoned should be, if possible, conversant with that language.

This inquiry, in the absence of the Magistrate, would rest with the local District Superintendent; but the local Magistrates in all such cases, and in all serious cases the District Magistrates, should lose no time in going to the spot, and should themselves superintend the inquiry into the cause of death. (C. O. G., N. W. P., 43 A of 1871.)

The following rules, approved of by the Government of India, are in force in all the Bengal Presidency:—

It shall be the duty of the Consulting Engineer to obtain the earliest possible information of all railway accidents of a serious nature, and to make such inquiries as he shall deem necessary; to report all special or serious accidents to the Lieutenant-Governor through the Judicial Department of the Secretary's Office; to direct the attention of Magistrates to cases which, in his opinion, require investigation; to attend, if called upon to do so, at the Magistrate's office, and render him all assistance in the inquiry, if he see fit, and be allowed to conduct the prosecution before the Magistrates; when a case is committed to the Sessions, to watch its proceedings till final trial. The District Superintendent will himself proceed to the scene of every serious accident likely to have endangered life or caused serious loss of property. If, for unavoidable reason he is unable to go, he will at once report to the Magistrate, who will himself undertake the inquiry or depute his Assistant or the Assistant Superintendent of Police. Where there is a special Railway Police, the inquiry must be conducted by the Assistant, I. G. Railway Police, and in his absence by the Magistrate or whoever he may depute.

The officer conducting inquiry shall summon all officers of the Rail. Dept. whose presence he considers necessary; if he is of opinion that sufficient grounds exist for a judicial investigation, shall bind all parties to appear before the Magistrate on a day to be fixed by that officer.

The Magistrate, on receiving the report of the officer holding the inquiry, shall fix time and place for the judicial investigation. Investigation into serious accidents likely to endanger life or cause serious loss of property shall be held at the Railway Station nearest the scene of accident; but if the officer holding the inquiry think that the ends of justice will be promoted by his so doing, he may, on the application of the Rail. Comp. or of the Consulting Engineer to Government appoint any other place within his jurisdiction for hearing the case, or may, with sanction of High Court, transfer the case for judicial investigation

CH. X. ss. 133, 134.

to any other Magistrate having jurisdiction on the line. For the convenience of all parties, jurisdiction to deal with Railway cases has been given to certain specified Magistrates along the line. High Court, N. W. P., Cir. Such other Magistrate shall proceed to inquire into the case as if it had occurred in his own district.

The Magistrate will, whenever he wishes for the assistance of the Consulting Engineer, in aiding the Police inquiry, or in prosecuting the case before him, or in giving evidence on matters relating to Railway administration, issue a requisition to that officer to attend.

He will report the result of his inquiries into all serious accidents to the Commissioner for the information of Government.

He will insist upon attendance of all officers of the Rail. Comp. of whatever rank, if he considers such attendance necessary.

He will enforce provisions of the Act against high officers of the Rail. Comp. their omitting to prosecute their subordinates for breaches of Railway Law.

The Railway Company's duties are—

To bring to justice all subordinates guilty of breaches of the Railway Act.

To report immediately to the Consulting Engineer all accidents ocurring on the line, giving fullest information.

To assist the Police and Magistrate in conducting inquiries into accidents, to depute some responsible and intelligent officer, who shall aid these authorities in obtaining evidence and securing the attendance of Company's subordinates.

To see that any subordinates guilty of breaches of the Railway Act who are likely to abscond are at once arrested and made over to the District Police.

To give immediate information to the Magistrate of all accidents and offences.

In the Panjab (C. XV of 1868) all serious railway accidents other than such as arise from fortuitous circumstances to be at once personally and locally investigated by District Superintendents or their Assistants. Special reports to be sent in without delay.

Power to summon persons.

* S. 137.

134. An officer in charge of a Police-station* may, by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation,† and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions (other than questions which would criminate him).

† S. 4.

If the facts do not disclose a cognizable† offence to which section one hundred and twenty-seven is applicable, such persons shall not be required by the Police officer to attend a Magistrate's Court.

[S. 174, Penal Code, provides for disobedience of order to attend, and s. 179, Penal Code, for refusing to answer question.]

Inquiry into cause of such death by nearest Magistrate.

135. The nearest Magistrate* duly authorized may hold an inquiry† into the cause of any such death either instead of or in addition to the investigation† held by the Police officer, and if he does so, he shall have all the powers‡ in conducting it which he would have in holding an inquiry† into an offence, although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence§ taken upon it in any of the manners hereinafter prescribed, according to the circumstances of the case.

* Ss. 21, 23, 25, 27, 28.
† S. 4.
‡ Ss. 139, &c.
§ Ss. 332—334.

Substitute for officer in charge of Police Station during his absence or illness.

136. The powers to be exercised by an officer in charge of a Police-station under this chapter shall be exercised, in the event of his absence from the station-house or of his illness, by the Police officer next in rank present at the Police-station above the rank of a constable.

Powers of superior officers of Police.

137. Officers of Police superior in rank to officers in charge of a Police-station may exercise the same powers throughout their local jurisdictions as may be exercised by officers in charge of Police-stations within the limits of such stations.

Sub-Inspectors and all of higher grade of the Railway Police to have these powers within the districts along the line for the purpose of inquiring into Railway cases only. (Pol. Not. 236 of 1869, N. W. P.)

Assistant District Superintendent of Police may exercise powers of District Superintendent.

138. For the purposes of this Act, an Assistant District Superintendent of Police may exercise any of the powers of a District Superintendent of Police, subject to the control of such District Superintendent of Police, or, in the absence of the District Superintendent of Police and the Assistant District Superintendent, the senior officer of Police on the spot may be directed by the Magistrate‖ of the District to exercise the powers of a District Superintendent of Police.

‖ S. 35.

CH. XI.
ss. 139, 140.

Remarks of Select Committee on Part IV.

In Part IV, we have distinctly defined the classes of Magistrates who may entertain complaints, act without any complaint, or commit to the Court of Session, and have set forth the procedure necessary for compelling appearance.

PART IV.

OF PROCEEDINGS TO COMPEL APPEARANCE.

CHAPTER XI.—Ss. 139—151.

OF COMPLAINTS TO A MAGISTRATE.

Processes.

139. Proceedings to compel the appearance before a Magistrate* of persons accused or suspected of offences, who have not been arrested without warrant, may be by summons or by warrant.

* S. 6, n.

In the case of persons of known respectability and prudent demeanour, the Bombay Regulation (XIII, 1827, s. 34, cl. 3) declares it sufficient to notify that they are wanted by written order or letter, and their returning the same with intimation of their acquiescence in the order will be sufficient security.

When summons or warrant may be issued.

140. A summons or a warrant may be issued—

(*a*.) Upon a report† by the Police under Chapter X; but if the person complained of is already in custody, no complaint, summons, or warrant is necessary:

† S. 127.

(*b*.) Upon information† or report by a Police officer as to a non-cognizable‡ offence. Such information or report shall be regarded as a complaint:

‡ S. 4.

(*c*.) Upon a complaint (*a*) by a private person. Any person acquainted with the facts of a case may make a complaint (*b*):

(*d*.) Upon suspicion entertained by a Magistrate§ that an offence‖ has been committed (*c*).

§ S. 6, n.
‖ S. 141, n.

(*a*). Complaints may be either written or verbal.

A written complaint should be upon foolscap paper, and bear a Court Fee Stamp of 8 annas value on the face of it; it should be written in a clear hand, and contain a concise account of the offence complained of, with a brief *resumé* of the chief facts leading up to

or composing the same; it should be presented by the complainant himself or any person who is cognizant of the facts, and can depose to them on oath. (Mad. High Court Sud. Pro., July 15 and Sept. 15, 1862).

A petition giving information of an offence, if presented by a prisoner or other person in duress or under restraint of any Court or its officer, a complaint by public servants (as defined in the Indian Penal Code), Municipal Officers, or Officers or servants of any Railway Company, need not bear any stamp.

Verbal complaints should be made by the complainant in person or other person able to depose to the facts on oath, and if it be of an offence for which the Police may arrest without warrant, save and except the offence of wrongful restraint and wrongful confinement, no fee is necessary; if of any other offence other than that for which Police may arrest without warrant or of wrongful restraint or wronful confinement, then a fee of eight annas should also be brought. It is optional with the Court to take or remit this fee. Panj. Bk. Cir. IX of 1871 prescribes a Register in which these fees should be at once entered.

For procedure after this written or verbal complaint has been brought, see s. 144.

Before proceeding with offences against the State, Judges and public servants, contempts of the lawful authority of public servants, offences against public justice, relating to documents given in evidence, and contempts of Court, it should be noted whether the provisions of ss. 465—473 have been duly complied with.

For procedure to be observed in cases under Chap. XIX, Penal Code, Breach of Contract of Service; Chap. XX, Marriage, &c.; Chap. XXI, Defamations, see s. 142.

The Calcutta High Court has further directed that it is expedient that, as far as possible, complaints should be received at a selected hour each day, of which due notice be given beforehand.

Each complaint, as it is received, should be duly numbered with a serial number, in order of receipt, and entered in a register to be kept by each Court for that purpose, and the stamp on it punched out.

(*b*). The proper persons to institute proceedings under a special or local law are those empowered to administer it, but for further information, see schedule of local and special laws.

District Superintendents of Police, in each District in which recruiting for emigrants is carried on, are invested with the power of instituting prosecutions for offences committed against the Act. (G. O., N. W. P., 190A, dated 25th October, 1871.)

A report sent in by a forest officer is not a complaint until such officer has been examined as prescribed in s. 144, C. P. Bk. Cir. 36-1082 of 1869.

(*c*). Summonses and warrants after signature should be made over to the Court Inspector for entry in his Register. He will then endorse on them the name of the officer by whom they are to be executed. (N. W. P. Pros.) One copy of summons will be left with the accused or where or on whomsoever it may be served, while the other will be returned to the Court whence it issued. In all warrants and processes of every description, whether under the Criminal Procedure Code or any other law in force, the father's name, the caste or tribe, and the residence of the person to be arrested, summoned, &c., should be entered, so as to place his identity beyond all doubt. Panj. Bk. Cir. XX of 1871.

Oudh Rules.

All petitions in the Criminal Department shall, in the first instance, go to the Magistrates empowered to receive complaints, or to the Deputy Commissioner.

If a petition be presented to a Deputy Commissioner relating to an offence committed within an area within which a Subordinate Magistrate is empowered to receive complaints, the Deputy Commissioner may transfer such petition to such Subordinate Magistrate, by an order recorded on the back of the petition; otherwise, he will proceed as directed by the provisions of this chapter.

An hour of the day should be specified on which all the officers will commence hearing petitions on the Criminal Side, in their respective jurisdictions, and this hour should be publicly notified on a board affixed outside the Cutchery. It should also be a rule that when once the hearing of criminal petitions has commenced, no other work should be allowed to interfere with that special duty until all have been heard, and orders passed thereon. The nature of the order should be clearly explained to the petitioner, who should also be furnished with a copy of the same for his information and future guidance in the progress of the case.

When a Magistrate takes up a case cognizable by the Police, without having recourse to their agency, he will send a memo. to that effect to the District Superintendent of Police in which the nature of the case and the result of the investigation will also be stated.

* S. 35.

† S. 40.

‡ Ss. 21, 23, 25, 27, 28.

§ S. 4.

|| S. 140.

¶ S. 127.

** S. 147.

Who may entertain complaints.

141. The Magistrate* of the District, any Magistrate† of a division of a District, or any Magistrate‡ duly empowered (*a*) in that behalf, in any case which he is competent to try§ or to commit for trial,§ may entertain a complaint|| of an offence (*b*) whether preferred directly by the complainant, or on report¶ of a Police officer, and may issue process,** in the manner hereinafter prescribed, to compel the appearance of persons accused of such offences (*c*).

(*a*). All Panjab Tehsildars exercising powers of 2nd class Magistrate and all Magistrates in charge of out-stations to entertain cases within their cognizance, either on complaints preferred directly to them or on the report of the Police. (Panj. Not. of August 1869.)

(*b*). By Act IV of 1867 the word "offence" in the Penal Code has been defined to be anything made punishable by the Penal Code or by any special or local law, with reference to certain sections therein enumerated.

(*c*). It is often argued that when a complainant has in the preamble prayed that a person may be punished, under a specified section of a specified Act, or has defined the offence complained of in a vague and irregular manner, the Court cannot travel beyond what the complainant has thus complained of, and charge or find a person guilty under any other section than that mentioned in the preamble or of any other offence

than that vaguely or irregularly recorded. This is, however, entirely contrary to the provisions of this Code, the facts complained of should be looked to, and not the language with which those facts are surrounded. But where a complainant (or a Police report) makes no mention either in his written complaint or in his subsequent examination of facts that disclose a perfectly new offence, such offence cannot be inquired into on the original complaint. To take a common instance, a man prays that the accused may be punished under s. 379, Penal Code, and the facts mentioned in his complaint or written examination show that an offence under s. 323, Penal Code has also been committed, the Court can inquire into both offences; similarly, where the preamble or Police report may show s. 379, and the fact disclosed in the complaint or report point to an offence under s. 453, the Court can inquire into the latter.

S. 203 contains much that is new on this subject, and deserves careful attention.

In the case of Dulali Bewa *v.* Bhuban Shaha, the Calcutta High Court denounced as irregular the proceeding of a Magistrate who on receiving a complaint in a case which had previously been investigated by the Police, sent for the Police record, and after perusal of that without recording the complaint, under s. 144, dismissed it.

Book Cir. No. 26 of 1869, Oudh, directs that when a Magistrate takes up a case cognizable by the Police, he should send a memo. of the nature of the case and result of the investigation to the District Superintendent of Police.

Effect of reference.

Any Magistrate to whom any case is duly* referred, by any Magistrate† duly empowered to make such reference, may dispose of such case.

* S. 44.
† Ss. 21, 27, 28, 44, 47.

The proceeding of a Registrar under Act XX 1866, transferring a case to himself as Magistrate, and ordering an inquiry thereon, is not a complaint under this section. (Ashanoollah, W. R., I, 21.)

Effect of complaint or Police Report.

A complaint or a Police report gives jurisdiction to a competent‡ Magistrate to inquire§ into or try§ any offence covered by the facts complained of or reported, and also to try§ or commit for trial§ any person who, at the time when the complaint or report is made, or subsequently, appears to have committed the offence disclosed.

‡ Ss. 21, 23, 25, 27, 28.
§ S. 4.

Who may act without complaint.

142. The Magistrate‖ of the District, any Magistrate¶ of a division of a District, or any Magistrate** duly empowered in that behalf, in any case in which he is competent to try§ or to commit for trial,††

‖ S. 35.
¶ S. 40.
** Ss. 21, 25, 27, 28.
†† S. 4.

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SS. 142—144.

may, without any complaint,* take cognizance of any offence† which he suspects to have been committed, and may issue process‡ in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.†

* S. 140.
† S. 141, n. (b).
‡ S. 147.

Complaint or sanction required in certain cases.

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to take cognizance of a case without complaint, when the offence falls under Chapters XIX, XX or XXI of the Indian Penal Code; nor to entertain a complaint, or to take cognizance without complaint, of an offence without sanction, where such offence, by any law in force, may not be entertained without sanction.

Chapter XIX of the Penal Code refers to criminal breaches of contracts of service; Chapter XX to offences relating to marriage; Chapter XXI to defamation.

Only a Magistrate having jurisdiction can entertain cases without complaint; if a Magistrate not duly empowered does entertain them, it is an error which vitiates subsequent proceedings. (S. 74.)

Who may commit for trial.

143. The Magistrate§ of the District,
any Magistrate‖ of a division of a District,
any Magistrate¶ of the 1st class, or
any Magistrate** duly empowered in that behalf,
may commit any person to the Court of Session for any offence†† triable by such Court.

§ S. 35.
‖ S. 40.
¶ Ss. 19, 20.
** Ss. 21, 23, 25, 26.
†† S. 4.

Examination of complainant.

144. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made to a Magistrate, such Magistrate, if he is competent‡‡ to receive such complaint, shall examine the complainant (a).

‡‡ S. 141.

(a). When a written complaint duly prepared as shown in notes to s. 140 has been brought either by complainant himself or authorized agent acquainted with the facts of the case, the Magistrate shall proceed to examine the petitioner himself, and shall either with his own hand record, or cause to be recorded in his presence and at the time of

examination the statement made. This should be no mere formal proceeding, but the Magistrate should obtain a full, clear, and detailed account from the person before him, and then proceed to consider what steps should next be taken.

He may refer the complainant to a Magistrate having competent jurisdiction (s. 145), or may dismiss the complaint (s. 147), may order further inquiry to be made (s. 146), or he may issue warrant or summons. There is nothing to forbid his asking the petitioner for witnesses or proofs, and fix another day for their hearing prior to taking any steps for securing the attendance of the accused. This examination of the complainant and witnesses should be on oath or solemn affirmation.

The Calcutta High Court have, in addition to similar rules to the above, directed that the order on this examination, whatever it be, should be in the Magistrate's handwriting, and that a certain time in each day should be set apart for receiving complaints. (Cir. 5 A, dated Sept. 7, 1868).

These examinations should contain name of deponent, name of his or her father (and if a married woman, of her husband), religion, caste, profession, age, and residence, with name of village and pergunnah, also whether oath or solemn affirmation were given, and by whom. (Cir. 19, dated Sept. 17, 1864.) Complaints when received should be immediately numbered in the order of receipt and entered in the register prescribed by the High Court for the purpose. This book to be under the Magistrate's control.

A Magistrate *must* receive all complaints that he is competent to receive, nor can he decline any complaint on the ground that it was written by some person other than the complainant. (J. C. Panj., R. 104, 1862 and 1864.)

The examination shall be reduced into writing in a summary manner (*b*) and signed by the complainant, and also by the Magistrate.

(*b*). Although the examination is to be recorded summarily, it should not itself be summary, &c.

Effect of irregularity.

When the complaint has been made by petition, and the Magistrate neglects to examine the complainant, the trial* of the person accused shall not be set aside on this ground.

* S. 4.

Procedure by Magistrate not empowered to hear complaint.

145. If the Magistrate be not competent to receive the complaint, he shall refer the complainant to a Magistrate† having jurisdiction.

† Chap. VI.

Postponement of issue of process.

146. If the Magistrate‡ sees cause to distrust the truth of a complaint, he may postpone the issuing of process for compelling the attendance of the person complained against, and may direct a

‡ S. 6, n.

CH. XI. s. 146.

* Ss. 4, 118, 121, 128, 132.
† Ss. 37, 41.

previous inquiry* or investigation* to be made into the truth of the complaint, either by means of any officer subordinate† to such Magistrate, or of a local Police officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such inquiry* or investigation* is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police-station, except that he shall have no power to make an arrest.

The Magistrate making over a case for inquiry should inform complainant of his having done so, and should fix a day for the return of the inquiry on which complainant can again attend. On receipt of the inquiry the Magistrate must remember that it is in itself no evidence, and if any portion of it is wanted for the trial, his only course is to summon the man who made the inquiry and make him depose as to what took place during his inquiry and what he discovered. The report should never be filed with the case unless it has been duly verified or become in any way evidence under the provisions of Act I of 1872, ss. 158 and *seq.*

The Police Officer directed to inquire (*vide* note, s. 110) will forward the report called for through the Sub-District Police Officer to the Magistrate who ordered the investigation. The Magistrate's order to inquire into a non-cognizable offence does not give the Police the power of arresting the accused for such offence. See also S. 144 n. (*a*).

Oudh Rules.

"District Officers should not refer to the Police for investigation, "report, &c., cases not ordinarily cognizable by them, except in very rare "and exceptional cases, and then only to ascertain some specific point "which the Police can report of their own knowledge. I fear that "there is too much of the old practice of getting rid of every trouble-"some petition by a kyfeeut, and that the result is to confound the "Judicial and Police functions, which it has been so much an object to "dissever, and to mislead the Police regarding their true character and "functions. There should be no such thing as a general kyfeeut on a "case; Judicial Officers should make their own investigations. Any "petty cases, involving local inquiry, may most properly be made over "to the Tahsildars invested with judicial powers, and Honorary Assist-"ant Commissioners, whose services are now so generally available. "Any reference to a Judicial Officer is preferable to a report from the "Police."

It would be as well if Magistrates, when they have a suspicion that a charge is false and vexatious, but the suspicion is not strong enough to justify them in withholding process, were, before directing issue of process, or ordering a local inquiry, to warn the complainants of the risk

they run of being prosecuted for a false complaint, or of being ordered to pay something to the accused by way of amends. The Magistrate must always endeavour that no person should be compelled to appear before him to answer a criminal charge, unless he has first satisfied himself that there is reason for proceeding against such person.

The provisions of s. 209, Criminal Procedure Code, do little towards strengthening the hands of Magistrates in dealing with frivolous and vexatious complaints, as there are but very few offences punishable with fine only, or with imprisonment for a period not exceeding six months. But if Magistrates, when passing an order of acquittal in cases which they have reason to believe that the complaint or charge was frivolous and vexatious, and in which the complainant after due warning declined to withdraw the prosecution, were to record an order authorizing the accused person to institute a charge under s. 211, Penal Code, it is possible that the parties unnecessarily subjected to inconvenience and annoyance would more frequently prosecute the offenders than they do at present.

Dismissal of complaint.

147. The Magistrate before whom such complaint* is duly made may, if, after examining the complainant, there is in his judgment no sufficient ground for proceeding, dismiss the complaint (*a*).

* Ss. 140, 142, 144.

(*a*). If a complaint appears *primâ facie* true, and is properly laid under the provisions of any penal law, it must be inquired into. It is not legal to dismiss it because the Magistrate may think that the Civil Court is the more fitting tribunal before which to lay it. (Cal. H. Ct., S. W. R., VIII, 45, Nubas Mukton; Baradokant Mookerjee, IX, 15; IX, 21, Kali Bhuttacharjee.) Nor, again, are civil proceedings any bar to a criminal suit. (S. W. R., IX, 22, Keshub Sing and others.)

There is no appeal from an order of dismissal under this section (J. C. Panj., 81, 1862—1864, Agra S. N. A., 1863, 38); but s. 298 provides that the High Court, the Court of Session, and the Magistrate of the District may order any Subordinate Court to inquire into any complaint which has been dismissed under this section.

The dismissal of a complaint shall not prevent subsequent proceedings.

Issue of Process.

If it appears to such Magistrate that there is sufficient ground (*b*) for proceeding, he shall, if the case appears to be a summons† case, issue his summons, or if the case appears to be a warrant† case, his warrant (*c*), for causing the accused person to appear before himself or some other Magistrate‡ having jurisdiction.

† S. 4.

‡ Chap. VI.

(*b*). After receiving a complaint a Magistrate should act with due caution ere he issues any process.

CH XI. ss. 147, 148.

Where a case looks very doubtful, he should warn the complainant of the danger of making a false or frivolous accusation. The task of deciding upon a complaint is no easy one; none should be compelled to answer to a criminal charge unnecessarily, and yet by dismissing complaints recklessly justice may often be withheld.

Where a complaint is brought against several men, great discrimination is necessary, and the petitioner should be well pressed and plied with questions as to the proofs he has to bring against each individual. Natives are too fond of wholesale complaints: if they have a good grievance against one or two men, they gloat over it as an opportunity for paying off old scores, and they crowd into the column of defendant, fathers, sons, uncles, servants, and ninety-ninth cousins indiscriminately. To drag into Court nineteen men and eventually find there is proof against three only is a common fault of beginners and fatal in its results: innocent persons are needlessly harassed, and a petty case of a broken head converted into the beginning of so long a chain of hostilities and criminal action that human providence is not high enough to give a prospect to the end.

(*c*). Railway officials not to be arrested without notice. See, further, s 117, note. So also in the Panjab, prior to the arrest of a Canal Officer, notice, when possible, should be sent to the Canal Officer's immediate superior. If this is impossible from any reason, then notice to be sent immediately after capture, as in cases where delay might cause failure of justice. (Panj. Pol. Cir. XXIII of 1872.)

In what cases a summons may issue.

148. When a complaint is made before a Magistrate* having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable† by such Magistrate and punishable with fine only, or with imprisonment for a period not exceeding six months, or with both, the Magistrate may issue his summons directed to such person requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

* Chap. VI.

† S. 4.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

Issuing a warrant in the first instance without due cause is irregular, but will not call for the interference of the High Court as a Court of Revision. (Aneef Putnee, W. R., I., 16.)

A Magistrate has no authority to issue simultaneously a summons and a warrant, unless he has reason to believe that the witness will not attend in obedience to the former. (Chunder Shekur Roy, W. R., XII, 18.)

In what cases warrant may issue on complaint.

149. When a complaint* is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence† triable‡ by such Magistrate and punishable with imprisonment§ for a period exceeding six months,

or when a complaint is made before any Magistrate‖ empowered to commit persons for trial‡ before the Court of Session, that any person has committed, or is suspected of having committed, any offence triable‡ exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried‡ by the Court of Session,

such Magistrate may issue his warrant to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaint.

* S. 140.
† S. 141, n.
‡ Ss. 4, 8.
§ S. 15, n.
‖ S. 143.

In all cases of this description Government is the prosecutor, and the complainant becomes the chief witness.—III, W. R., C. L., 18.

If several persons are charged together with offences arising out of one transaction, part of which offences are triable by a Court Subordinate to a Sessions Court, and the rest by the Sessions Court alone, or which should, in the Magistrate's opinion, be committed to the Sessions Court, all the persons implicated in the transaction should be sent up together to the Sessions Court, and the inquiry should, from the first, be conducted under this and the following sections. (Agra C. O. 14, 1862; Cal. C. O. May 19; Doonda Bhoia, S. W. R., VIII, 46.)

For jurisdiction over offences under special and local laws, see note under s. 8 and schedule of local and special laws hereto attached.

Warrant to arrest if summons not obeyed.

150. If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served in what the Magistrate deems a reasonable time before the time therein appointed for appearing to the same,

or if it appears to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act,

the Magistrate may issue his warrant to apprehend the accused person.

All summonses and warrants after execution return to the Court from whence they were issued, with an endorsement specifying whether they were served or not, and how and when they were served, if served at all.

Magistrate may dispense with personal attendance of accused.

151. In cases, of whatever nature, in which the Magistrate thinks fit to issue a summons, he may, if he sees sufficient cause, dispense with the personal attendance of the accused person, and permit him to appear by an agent duly authorized to act in his behalf.

But it shall be in the discretion of such Magistrate at any stage of the proceedings to direct the personal attendance of the accused person.

Magistrates should not, by indiscriminate exclusion of persons who are invested by law with a distinct professional status in criminal trials, deprive parties of legal aid which they could frequently obtain at a moderate cost. (W. R., XIV, C. O. XIII of 1870.)

CHAPTER XII.—Ss. 152—158.

Of the Summons.

Form of summons.

152. Every summons issued by a Magistrate to an accused person shall be in writing, in duplicate, and shall be signed and sealed by such Magistrate, and shall be in the Form (A) given in the second schedule to this Act, or to the like effect.

See notes on s. 139.

Initialling a summons is not sufficient, nor will an autograph stamp suffice. Summonses thus issued may be disregarded with impunity.

Summons by whom served.

153. A summons shall ordinarily be served through a Police officer; but the Magistrate* issuing the summons may, if he see fit, direct it to be served by any other person.

* S. 6, n.

A summons to be served in another district should be addressed to some specified person, such as the Court Inspector of the other district, the constable in charge of the local thannah in or near which

the summons has to be served. No provision has been made for a summons being endorsed or being served by a person other than the person to whom it is addressed. The Advocate-General in his opinion (June 13, 1863) assented that no provision has been made, but Magistrates of Districts in which a summons is sent to them to be served should, as a matter of policy, give all necessary assistance.

Where Police agency cannot be obtained, Government should defray the cost of serving a summons. (Cal. H. Ct. 1, dated 1st February 1862, Dipchand Chushal, Bomb. IV, 31.)

In issuing summonses Magistrates should fix a sufficient time for their being returned. When the officer charged with execution finds that a summons cannot be obeyed within the time given, he should return it to the Court issuing them, giving the necessary reason, and the Court can then issue fresh summonses. See Jud. Com., Cen. Prov., IV, 1865.

Summons how served.

154. The summons shall be served on the accused personally, in any district where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him; or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned, or the person with whom the copy is left, shall sign a receipt therefor.

When a summons has to be served on a person in a District other than that in which it was issued, Cir. 10, N. W. P., 1862, directs that it be sent in the name of the District Superintendent of Police of the district in which it has to be served, who will then endorse on it the name of the officer whose duty it will be to serve it.

Service when accused cannot be found.

155. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

Issue of warrant in addition to summons.

156. A Magistrate may, notwithstanding the issue of such summons, either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

CH XII.
ss. 157, 158.

* S. 35.
† S. 40.
‡ Ss. 21, 27, 28.

Summons or warrant for offence committed beyond local jurisdiction.

157. The Magistrate* of the District, a Magistrate† of a division of a District, or a Magistrate‡ of the first class duly authorized in that behalf and having local jurisdiction in such district or division of a District, may issue a summons or warrant for the apprehension of any person within such district or division of a District in respect of any offence known or suspected to have been committed by such person in a different district or division of a District, or on the high seas, or in a foreign country, and for which, if committed within the local jurisdiction of such Magistrate, he might issue a summons or warrant.

If the person issuing such a summons or warrant is not competent to complete the inquiry himself, he should forward him as directed in s. 65 *et seq.* (*vide* especially 65 notes). See also App., "Extradition."

Provisions in this chapter as to form, service and issue of summons applicable to all summonses.

158. The provisions relating to a summons, its issue and service, contained in this chapter, shall be applicable to every summons issued under this Act, except a summons to serve as a juror or assessor:

Provided that, when the person summoned is in the service of Government or of any Railway Company, the Court or Magistrate§ issuing the summons may send the summons to the head of the office in which the person summoned is employed, and such head shall thereupon cause the summons to be served on the person named therein.

§ S. 6, n.

Thus when a Police, Canal, Secretariat, or Medical Subordinate is wanted, it is better to send the summons through their official superiors.

The attention of heads of Offices is drawn to the following notification:

Panjab Government Gazette of 1871, p. 845.—The summons which Mr. . . . was directed to serve, according to the ordinary procedure, upon a sub-overseer subordinate to him, he declined to recognize, disobeying the lawful order of a competent Court. He entered into elaborate argument to show that the Assistant Commissioner who originally issued the summons, and the Magistrate of the District who supported him, were both in the wrong, and desired the trial to be postponed pending orders from the Local Government, to which he begged the case to be transferred.

2. His Honor the Lieutenant-Governor can only find in Mr. . . .'s ignorance an excuse for conduct which is altogether intolerable. He, and officers of his position, have to obey the law, and not interpret it; and the Lieutenant-Governor will not for a moment permit the action of the Law Courts to be obstructed or their authority questioned in the presumptuous manner which has been adopted by Mr. . . . on the present occasion. The Lieutenant-Governor has observed, in more than one direction, a tendency to dispute the authority of the Courts of Law, and to enter into irrelevant arguments with the attempt to prove them in error. This practice and tendency must at once cease, and the orders of Judicial Courts must be complied with, because they are orders issued by competent authority, and not because an executive officer, whose opinion would be valueless even were it asked, considers it in accordance with his views of correct law or procedure. Were conduct such as that of Mr. . . . in the present case tolerated, the proper administration of the Courts of Justice would be impossible.

CHS. XII, XIII. ss. 158, 159.

Remarks of Select Committee on Chapter XIII.

In Chapter XIII, we have, following the provisions of an old Regulation, provided for the issue of a warrant to landholders and other persons for the apprehension of criminals on their estates.

CHAPTER XIII.—Ss. 159—185.

Of the Warrant.

Form of warrant.

159. Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed by such Magistrate, and shall be in the Form (B) given in the second schedule to this Act, or to the like effect.

Effect of warrant of arrest.

The warrant issued under this chapter remains in force until the person arrested is brought into the presence of the Magistrate who issued it, and so long as he remains before such Magistrate. If the person arrested is to be remanded to custody, an order must be made under section one hundred and ninety-four, or a warrant issued under section three hundred and three.

Warrants, like summonses, must be properly signed and sealed. See note on s. 152. For Police procedure on receiving a warrant, see note on s. 140.

A mere informality, such as the omission of the time for execution, only renders a warrant irregular, and does not invalidate it.

If advantage be taken of such irregularity to prejudice the prisoner, it affords grounds for an application to the Court to set the warrant aside.

A mere delay in bringing the prisioner before the Court after his arrest, if not for a considerable period, does not render his detention illegal. (Bholanath Mullick, Bourke's Rep., O. C., 96.)

Magistrate may direct bail to be taken.

160. It shall be in the discretion of a Magistrate, in issuing a warrant for the arrest of any person, to direct by endorsement on the warrant that, if such person be willing and ready to give bail,* in a sum to be fixed by the Magistrate, for his appearance before the Magistrate on a specified day [which sum and day shall be named in such endorsement], to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release from custody the person complained against.

* Ss. 388, &c.

Bail-bond to be forwarded.

If bail is given, the officer shall forward the bail-bond to the Magistrate.

The Oudh Government in Police Circular Order 20 of 1870 directs that in all cases where the character and number of the prisoners will admit (consistently with their safe custody), the system of forwarding station by station should always be resorted to; this arrangement saves the men of distant districts from an undue share of escort duty falling on them, and the State no inconsiderable amount of carriage hire.

The above orders will, however, not be applicable to the case of convicted prisoners escorted from one jail to another.

Warrants to whom directed.

161. A warrant shall ordinarily be directed to a Police officer, but the Magistrate issuing a warrant may, if immediate execution be necessary and no Police officer be immediately available, direct it to any other person.

No warrant of arrest, in which arrest does not immediately follow, will be recorded as finally executed, until six weeks have expired from the date of receipt of warrant at the station; if the accused is not arrested within that period, intimation will be given to the Magistrate having jurisdiction.

If the Magistrate thinks a proclamation necessary, he will issue an order, and the offender's name will then be entered in the Register of absconded offenders. (Police Circular 16, 1869, N. W. P.)

With regard to this Register, Oudh Bk. Circular of January 1870 directs that, on the 1st January of each year, the District Superintendent will prepare in vernacular, from the lists of previous year, one showing the names of all proclaimed offenders who have not up to that date been apprehended. This list will be laid before the Deputy Commissioner, with the view of ascertaining whether any offender's name is to be omitted in future lists. The Deputy Commissioner, after recording his orders, will send in the list, through the Commissioner, to the Inspector-General of Police, who will then prepare the provincial list for the following year. For further Oudh Rules, see App., "Absconded Offenders."

Warrant may be directed to landholders, &c.

162. The Magistrate* of the District may direct a warrant or warrants to landholders, farmers or managers of land for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable† offence, and who has eluded pursuit.

* S. 35.

† Sched. IV.

Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it, should the person, for whose arrest it was issued, enter on or be in his estate, farm or land under his charge.

Should the person against whom such warrant is issued be arrested, he shall be made over to the nearest Police officer with the warrant, and such Police officer shall cause such accused person to be carried before the Magistrate‡ having jurisdiction, unless bail may be and is taken under section one hundred and sixty.

‡ Chap. VI.

This power belongs to Magistrate of the District only, and can never be exercised by a subordinate.

Warrants directed to any person other than a Police officer.

163. When a warrant is directed to a person other than a Police officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

All persons are bound to assist Magistrates and Police Officers in the execution of their warrants, but in the cases of warrants held by private persons it is optional with them to do so or not.

Warrant to several persons.

164. A warrant may be directed to several persons, and, when so directed, may be executed by all, or by any one or more of such persons.

Warrant directed to Police officer.

165. A warrant directed to a Police officer may also be executed by any other Police officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

Magistrate issuing warrant may superintend its execution.

* S. 6, n.

166. The Magistrate* by whom a warrant of arrest is issued may attend personally for the purpose of seeing that the warrant is duly executed.

Arrest in presence of Magistrate.

Any Magistrate* may also at any time direct the arrest, in his presence, of any person for whose arrest he is competent† to issue a warrant.

† S. 108, also Sched IV.

‡ S. 6, n.

Where warrant may be executed.

167. A warrant issued by a Magistrate,‡ shall ordinarily be executed in the district in which it was issued.

But if the person against whom the warrant is issued escapes, goes into, or is in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

Magistrate may issue warrant for execution in places outside his jurisdiction.

168. A Magistrate may direct a warrant to be executed outside his local jurisdiction, either after endorsement by a Magistrate within whose local jurisdiction it is to be executed, or without such endorsement.

If the warrant is to be so endorsed it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be entrusted to a Police officer, to be taken, either to a Magistrate, or to a Police officer, not below the rank of an officer in charge of a station,§ in whose local jurisdiction the warrant is to be executed.

§ S. 137.

Procedure on arrest of person against whom warrant was issued.

169. If a warrant is executed, whether with or without endorsement, outside the district in which it was issued, the person arrested shall, unless the Magistrate who issued the warrant be within twenty miles or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be taken under section one hundred and sixty, be carried before the Magistrate in whose local jurisdiction the arrest was made.

Procedure by Magistrate before whom arrested person is brought.

170. A Magistrate* or Police officer, to whom a warrant is directed for execution, shall execute the same, or cause it to be executed (*a*), and any Magistrate,* before whom a person is brought under the provisions of section one hundred and sixty-nine, shall, if the person arrested appears to be the person intended by the Magistrate* who issued the warrant, direct his removal in custody to the Magistrate* who issued the warrant,

or, if the offence be bailable,† and the person arrested be ready and willing to give bail,‡ shall take bail for his appearance before the Magistrate who issued the warrant, and the recognizance or bail-bond shall be forwarded to such Magistrate.

In this section the word "Magistrate" includes a Commissioner of Police and a Magistrate of Police in the Presidency§ towns.

* S. 6, n.

† Sched. IV, col. 5.

‡ S. 388, &c.

§ S. 4.

(*a*). By an order in writing, unless such Magistrate or Police officer be present at the time of its execution.

Proclamation for person absconding.

171. If any person accused of an offence,‖ not coming within section one hundred and forty-eight (*a*), absconds or conceals himself, so that, upon a warrant issued against him, he cannot be found, the Magistrate having jurisdiction shall, if he thinks, whether after taking evidence or not (*b*), that such person absconds or conceals himself for the purpose

‖ S. 141, n.

of avoiding the service of the warrant, issue a written proclamation, requiring him to appear to answer the complaint within a fixed period not less than thirty days.

(*a*). S. 148 refers to offences punishable with less than six months' imprisonment (q. v.).

(*b*). It is better, though no longer necessary, to ascertain, before issuing such proclamation, how the warrant was served and what efforts were made to secure the attendance of the accused. If the accused appear within the time specified, he is not liable to punishment under any section of the Penal Code; if after the time specified, he is liable under s. 174, Penal Code.

In a case, Mudoosoodun Sing, IX, S. W. R., 27, the accused after surrender did not deny that a warrant of arrest and proclamation had been issued, but pleading absence from home, set up a defence which was manifestly false,—the Calcutta High Court did not consider as an error vitiating subsequent proceedings the fact that evidence had not been taken to prove that the accused had absconded or concealed himself, or that the legal formalities of proclamation had been duly observed.

Such proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of such Magistrate's Court-house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of due compliance with the law (*c*).

(*c*). It would appear that the property of absconding witnesses can no longer be attached, for the warrant against a witness who failed to appear in answer to a summons would run:—"Whereas A B has been summoned and did not attend, and has thus committed an offence under s. 174, &c.," and s. 174, Penal Code, is an offence falling within the provisions of s. 148.

No criminal offender should be entered in the Register of Absconded Offenders until he has been proclaimed by a Magistrate under this section. See s. 161, note. Police Circular, N. W. P., 16, 1869.

Attachment of property of person absconding.

172. Such Magistrate (*a*) may order the attachment of any property, moveable or immoveable, or both, belonging to the person so absconding or concealing himself.

(a). Only the Magistrate having jurisdiction can order attachment of property, and if any other Magistrate do so, it is under s. 34 an irregularity which vitiates subsequent proceedings.

Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate of the District in whose district it is made; and it shall authorize the attachment of any property without the jurisdiction of the Magistrate* of the District, when endorsed by the Magistrate* of the District in which such property is situated.

* S. 35.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and, in all other cases, by seizure under the order of the Magistrate† having jurisdiction; or by the appointment of a manager and receiver; or by an order prohibiting the payment of rent to the absent person, as such Magistrate deems proper.

† Chap. VI.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government (b), but shall not be sold until the expiration of six months (c), unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

(b). The law does not lay down any period within which it is imperative to order the sale of property attached under the section. When the accused does not appear within the prescribed thirty days, the Magistrate should ascertain (a mere Police report is not sufficient) if all the formalities prescribed by law have been complied with; and during the inquiry, if the accused person appear, he should be called upon to show cause why his property should not be sold. (Muddun Mohun Poddar, III, W. R., 35; Jhundro Sing, V, W. R., 8.)

(c). The Board of Revenue in Lower Bengal have directed that land thus attached should be managed under Reg. V, 1827, as soon as the six months expire; but the Collector should at once declare the right of Government to such land after the six months have elapsed, and obtain an order from the Magistrate directing him to sell it.—Bd.'s Mis. Rules, p. 5.

An accused cannot claim exemption from forfeiture merely because the case has been struck off the file. (Madhosoodun, VII, W. R., 40.)

In attaching property under this section a Magistrate should be careful not to interfere with or disturb the possession of any third person; he can only attach the property of the person absconding.

If other claimants do not bring forward any claim within the six months during which the land is under attachment, a Magistrate might fairly presume that the property belongs to the absconding person and not to fresh claimants, and refer such new claimants to the Civil Court. (Chamroo Roy, VII, W. R., 35.)

If proceedings have been properly conducted, no civil suit brought by the absconding party will lie. (Bukhowree Sing, W. R., VIII, 207, Civil Cases.)

Restoration of forfeiture.

173. When any person whose property has come under the disposal of Government under section one hundred and seventy-two appears or is found within two years after the attachment of the property, and proves to the satisfaction of the Court of Session or High Court trying him for the offence of which he was accused, or, if he is not tried* in, or committed for trial* for that offence to either of those Courts, to the satisfaction of the Magistrate† of the District, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the proceeds thereof, shall be restored to him.

* S. 4.

† S. 35.

The *onus* of proving that he was not evading justice lies with the absconder. See App., 'Absconded Offenders."

Forfeiture of property of an absconding offender, who appears within two years from the attachment of his property, should not be carried into effect until after a regular inquiry into the causes of the offender's absence. (Bishonath Sircar.)

Magistrate's procedure on arrest, under his own warrant, for offence committed out of his jurisdiction.

174. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of section one hundred and fifty-seven, in respect of an offence known or suspected to have been committed in another District or Division of a District, the Magistrate‡ who issued the warrant shall, unless he is authorized to complete the inquiry§ himself, send the person arrested to the Magistrate‖ within the limits of whose jurisdiction the offence is known or suspected to have been committed, or shall take bail¶ for his appearance before such Magistrate, if the

‡ S. 6, n.

§ S. 4.

‖ Chap. VI.

¶ S. 388, &c.

offence, of which such person is suspected, is bailable.*

When the Magistrate, who issued the warrant, cannot satisfy himself as to the Magistrate† to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

* Sched. IV., col. 5.
† S. 6, n.

All Magistrates are not competent to issue a warrant under s. 157—v.

Procedure where such warrant issued by Subordinate Magistrate.

175. If the arrest was made under a warrant issued under section one hundred and fifty-seven by a Magistrate other than the Magistrate‡ of the District, such Magistrate shall send the person arrested to the Magistrate‡ of the District, unless the Magistrate, in whose jurisdiction the offence is suspected to have been committed, issues his warrant for the arrest of such person; in which case the person arrested shall be delivered to the Police officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

‡ S. 35.

If the offence, of which the person arrested is suspected, has been committed in the jurisdiction of another subordinate Court of the same District, the Magistrate who issued the warrant under section one hundred and fifty-seven shall send the person arrested to the Magistrate§ of the Division of the District in which the offence was committed.

§ S. 40.

Notification of substance of warrant.

176. A Police officer or other person, executing a warrant of arrest, shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

Notification is necessary, or else a person might obstruct such Police officer and plead right of private defence.

Warrant how executed.

177. In making an arrest, the Police officer, or other person executing the warrant, shall actually touch or confine the body of the person to be arrested, unless

there be a submission to the custody by word or action.

1. Directly a prisoner is arrested on charge of any offence included in Schedule IV of this Act or of vagrancy, he must be thoroughly searched. This must be done, wherever possible, in the presence of two witnesses not connected with the Police. Whenever such witnesses cannot be procured, the fact must be explicitly stated.

2. All property found, not actual clothing, must be carefully marked, labelled, or consigned, so that its identity is a matter of certainty.

3. The greatest care must be taken when a prisoner is arrested to guard against his getting rid of any weapon or article of property which may furnish evidence of his guilt.

4. Constables receiving prisoners will be careful to ascertain that they have been thoroughly searched according to the above rules by the Police party from whom they receive the prisoner. (P. C., N. W. P. 23, 1861.)

See also Panj. Man., p. 212, which further adds: The most trifling article should be noticed. A murder has occurred in which had a certain bit of string been produced from the person of the prisoner *at once* before respectable and independent *witnesses*, and had it been labelled, locked up, and placed beyond the arena of doubt, that bit of string might have proved strong enough to hang the prisoner.

Resisting endeavour to arrest.

178. If a person, against whom a warrant of arrest is issued, forcibly resists the endeavour to arrest him, the Police officer or other person executing the warrant may use all means necessary to effect the arrest.

And against the means used there is no right of private defence, unless such means shall reasonably cause apprehension of death or grievous hurt. S. 99, Penal Code, which follows, should be borne in mind.

Acts against which there is no right of private defence.

99. *First.*—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under color of his office, though that act may not be strictly justifiable by law.

Second.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under color of his office, though that direction may not be strictly justifiable by law.

Explanation 1.—*A person is not deprived of the right of private defence against an act done*, or attempted to be done, by a public servant, as such, *unless he knows, or has reason to believe, that the person doing the act is such public servant.*

Explanation 2.—*A person is not deprived of the right of private defence* against an act done, or attempted to be done, by the direction of a public servant, *unless he knows, or has reason to believe*, that the person *doing the act is acting by such direction*, or unless such person *states the authority* under which he acts, or, if he has *authority in writing*, unless he *produces* such authority, if demanded.

The different offences by which a Police officer may be impeded, will be found under ss. 186, 189, 224, 225, 332, 333, Penal Code.

Search of house entered by person against whom warrant issued.

179. If there is reason to believe that any person, against whom a warrant has been issued, has entered into, or is within, any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police officer or other person executing the warrant, to allow such Police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

Offences by which such Police Officer may be impeded are punishable under ss. 186, 187, 212, 216, 225, Penal Code.

Breaking of door or window.

180. The Police officer or other person authorized by warrant to arrest a person may break open any outer or inner door or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking open zenana.

181. If information be received that a person accused of any offence for which a warrant may issue is concealed in an apartment in the actual occupancy of a woman, who, according to the customs of the country, does not appear in public, the Police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

If the accused person does not deliver himself up, the Police officer or other person authorized to execute the warrant may notify his authority and purpose, and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being

a person against whom a warrant has been issued, that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.

No unnecessary restraint.

182. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

S. 29, Act V, 1861, punishes any unnecessary restraint or cruelty by a Police officer in the execution of his duty, and ss. 330, 331, 332, Penal Code, provide for graver cases of violence or restraint.

Person arrested to be brought before Magistrate.

183. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

Inducements to disclosure or confession.

184. No Police officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

The provisions of this section are almost identical with those of s. 120, which should be consulted.

Provisions as to warrant and its execution and issue applicable to all warrants of arrest.

185. The provisions relating to a warrant and its execution, contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

Remarks of Select Committee on Chapter XIV.

In Chapter XIV, we have cleared up the doubt which formerly existed as to whether a Court might, except in summons cases, allow an offence, which was by law compoundable, to be compounded in Court. We recommend that this should be allowed.

PART V.

OF INQUIRIES AND TRIALS.

CHAPTER XIV.

PRELIMINARY.

Right of accused to be defended.

186. Every person charged before any Criminal* Court with an offence† may of right be defended by any barrister or attorney of a High Court, or by any pleader duly qualified under the provisions of Act No. XX of 1865, or any other law in force for the time being relating to pleaders. * S. 4. † S. 141, n.

See ss. 13, 40, Act XX, 1865.

Any such person may, with the permission of the Court (but not otherwise), employ any mukhtár (*a*), or other person not being a barrister, attorney, or pleader, to assist him in his defence.

(*a*). It is true that the law has left Criminal Courts the discretion of allowing accused to be defended by a mukhtár or not, but the High Courts have repeatedly expressed their distinct wish that, save for good and valid reasons, Courts should allow men to avail themselves of this cheap professional aid instead of forcing them either to stand undefended or be ruined by the expenses incurred in employing barristers and pleaders.

Attorneys, pleaders, mukhtárs, and agents have to file a power of attorney. The fee on such document is eight annas. Barristers are exempt.

Where accused person does not understand the proceedings.

If an accused person, though not insane, cannot be made to understand (*b*) the proceedings, the Court may proceed with the inquiry* or trial;* and if such inquiry* results in a committal, or if such trial* results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the * S. 4.

High Court shall pass thereon such order as to it seems fit.

(*b*). Where the difficulty is owing to the accused speaking a foreign tongue to that of the Court, and the services of an interpreter are available, the evidence should always be interpreted to him.

Criminal Courts to be open.

187. The place in which the Court of a Magistrate is held for the trial* of any offence, or for the purpose of conducting an inquiry* into any case triable† by a Court of Session or High Court, and also every Court of Session and every High Court shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them.

* S. 4.

† Sched. IV.

But the Magistrate or presiding Judge may, if he thinks fit, order that, during the inquiry* into or trial* of any particular case, no person shall have access to, or be, or remain in, the room or building used by the Court without the consent or permission of the Court.

Compounding offences.

188. In the case of offences which may lawfully be compounded (*a*), injured persons may compound the offence out of Court, or in Court with the permission of the Court.

(*a*). For offences that may be compounded, see s. 177, Penal Code. All offences may be compounded in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action.

Such withdrawal from the prosecution shall have the effect of an acquittal (*b*) of the accused person.

(*b*). See s. 460.

CHAPTER XV.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Procedure in preliminary inquiries.

189. The following procedure shall be adopted in inquiries‡ before Magistrates in cases triable§ by a Court of Session or High Court.

‡ S. 4.

§ Sched. IV.

Rules for Duties of Police at Inquiries and Trials.

The following rules are laid down for the guidance of the Police as to their duties in criminal trials. See Lower Bengal P. C. 12 of 1871:

I. *A Police Officer to attend all Criminal Courts.*—It is desirable that at the hearing of every criminal case sent up by the Police, a responsible Police officer be in attendance to conduct the prosecution, if the Magistrate wishes him to do so, or otherwise to assist as he may be desired.

II. *What Officers to prosecute.*—In cases of peculiar difficulty or great public importance, the District Superintendent or his Assistant should attend in person.

In ordinary cases this duty will devolve on the Court Inspector.

In petty and simple cases, or when two or more Criminal Courts are sitting at one time, head constables attached to the Court may be deputed.

At Sub-Divisions the duty will be preformed by the head Police officer employed in the Court, except in such cases as it is expedient that the District Superintendent or his Assistant attend.

III. *Prosecution in Lower Courts.*—The first duty of the Police officer will be to make himself thoroughly acquainted beforehand with the facts of the case and the evidence adducible in support of such facts. Ordinarily, ample time will elapse between the completion of the inquiry and the hearing of the case to enable the Court officer to make himself complete master of the contents of the special diaries. No pains should be spared for this purpose, as it is obvious that an officer who attends the Court with an imperfect knowledge of the facts that each witness is able to prove, may do the case material harm. The special diaries, if carefully prepared, will generally be found to contain all the information essential for the proper conduct of the prosecution. In intricate and heinous cases, the officer who made the local investigation will, as a rule, himself appear as a witness, and in such cases he should arrange to see the District Superintendent and Court Inspector before the Court opens, and ascertain that the strong points of the case are thoroughly understood.

VI. *Object of Rules.*—Every District and Assistant Superintendent is enjoined to assist the Magistrate to the utmost of his power to give effect to the above rules. This procedure should tend at once to the more careful conduct of inquiries; the more complete preparation of special diaries; and the better exposition and understanding of the evidence at the hearing of cases; and no duties are more peculiarly the duties of a Police officer than these.

District Superintendents should, by constant supervision, see that Court Inspectors do not neglect this the most important part of their duties, for the preparation of statements and registers, which can be written up equally well out of office hours, and at times when no Criminal Court is sitting.

Serious notice should be taken of any remarks made by a Magistrate to the effect that the Police officer came into Court with an imperfect knowledge of the case, or was otherwise remiss in his duty.

In N. W. P. and Oudh.

Every person (Rules for the guidance of Police officers, paragraphs 24 to 29) accused or arrested by the Police will be prosecuted through the Police, under the direction of the District Superintendent, and upon the Police will devolve every duty of maintaining order, and of securing the attendance of parties summoned on the day of trial.

A Court Inspector should be employed solely on this duty. This Officer should each day attend the Magistrate's Court, with a sufficient party of Police and Officers, for the business of the day.

To every Court of Justice a Head Constable or other officer of intelligence and one or two constables should be attached. The Inspector should deliver to him all Charge-sheets, prisoners, witnesses, and other parties or documents to be produced, and the Inspector himself should be in attendance either in the Court of the Chief Magistrate or in any other Court where a case of grave crime is to be tried. The District Superintendent should himself watch the proceedings in cases affecting the conduct of the Police or the Police administration.

The officer in attendance at each Court will be supplied with an order book.

In the order book he will record correctly every order issued to the Police by the Magistrate presiding, each entry having the signature of that officer in initials.

At the close of the day the Inspector will arrange for delivering into the custody of the Jailor all sentenced to imprisonment, and into the custody of the lock-up officer all left under trial. He will collect the order books and registers from the several officers in attendance at the Courts, and deliver the same into the Office of the District Superintendent for distribution or transmission to the Mofussil Police.

The primary duties (Circular No. 7 of 1868) of the officers attached to the Court are:—

A.—To convey information to the Magistrate of crimes or occurrences, and to receive orders thereon.

B.—The prosecution of criminals.

C.—The maintenance of order in the Courts.

The duties which thus devolve on the Police under heading B are as follows:—

I.—The receipt of all chulans from Police Officers of Stations, and the production before the Magistrate having jurisdiction of all diaries and charge-sheets, and of all records, documents, property, and witnesses forwarded by the Mofussil Police in cases brought to trial by the Police.

II.—The custody of all prisoners under trial before they are committed to the lock-up, their safe custody in, to, and from the lock-up, and when they may afterwards be brought before the Court, on remand of trial. The Police Officer in charge and the Nazir have joint charge of the lock-up, whenever this is a separate building,—the duty of the former being to provide the safe custody of the prisoners, and of the latter to diet them; while both are equally responsible for conservancy and general management under the supervision of the Magistrate. The Police Officer commanding the separate guard over prisoners in the lock-up will also be their jailor.

III.—The execution of all warrants of arrest, and production of the prisoners arrested, or delivery to the Court of bail or security bonds in cases where bail or security was allowed.

IV.—The serving of all subpœnas, injunctions, and other processes and the delivery of the receipts of services made.

V.—The delivery to the Jailor of all persons sentenced to imprisonment.

VI.—The custody of all property committed to the Magistrate's Malkhanah.

VII.—To keep a register of all absconded offenders.

VIII.—To keep themselves cognizant of, and to bring to the notice of the Magistrate, all former convictions of persons brought to trial.

IX.—To keep up the register of the attendance of witnesses.

X.—The attachment of all property in liquidation of fines under s. 307, and of absconded offenders under s. 172, and of absconded witnesses under s. 353, and the delivery of the property to the Court giving the orders, or to such other person as the Court may direct. The sale of property attached devolves on the nazir, or such other officer as the Magistrate may direct.

XI.—Preservation of the peace at the execution of capital sentence.

The books or registers necessary in the performance of the above duties will be kept up by the Court Inspector as follows:—

1*st*,—Order Book (to be kept separately for each Court).
2*nd*,—Register of warrants, summonses, and other processes.
3*rd*,—Register of Malkhanah (to be kept in three books).
I.—Intestate property (*lawaris*).
II.—Unclaimed property (*ladawee*) and property seized under s. 415.
III.—Property impounded in cases under trial.
4*th*,—Register of lock-up.
5*th*,—Register of time-table.
6*th*,—Register of witnesses (to be kept separately for each Court).
7*th*,—Register of absconded offenders.
8*th*,—Register prescribed by High Court Circular No. 1 of 1866. (Detailed memo. showing sentences passed and appealed).

[It is optional with Magistrates to allow the Court Inspector, or one of his own ministerial officers, to keep up Register No. 8.]

All executive duties other than those above enumerated, and the returns therewith connected, devolve on ministerial officers, and not on the Police.

Register No. 7 will show at once what men are still at large, and what officers in charge of stations are showing laxity in arresting the offenders of their circle. From this the Court Inspector will be able to give promptly any information the Magistrate may require on the subject. This register to be kept up with the greatest possible care.

Rules for Inspector on Duty in Magistrate's Court.

This officer (Circular No. 2 of 1864, paragraphs 16 to 19) should invariably be a native, acquainted with Criminal Law of Procedure, and of irreproachable character.

His duty is to supervise the entire work devolving on the Police on duty in the several Courts; to see that all prisoners under trial, and whose cases are to be brought on for hearing, either on charge by the Police, or by adjournment from previous hearing, and who may be in the custody of the Police, are in attendance; that the Head Constables in each Court have acquired an insight into the cases to be brought on, and that they have possession of the special diaries, weapons, or property to be produced, and that they have witnesses in attendance. He should himself, by examination of the special diaries, see whether there is ground for asking for adjournment to obtain further evidence, and if so, instruct the Head Constable to make such application; and in all cases when so directed by the District Superintendent, or in the absence of the Superintendent, in all cases of grave importance, he should himself conduct the prosecution of the charge.

He should see that proper order is maintained throughout the Court-house, and before the close of the day, that all warrants have been endorsed to the Officer of Stations concerned, and that all orders have been abstracted from Order Books and transmitted.

In cases committed for trial to the Sessions Court, he should report to the District Superintendent whether the Government Pleader has been employed by the Magistrate or no, and if not, the grounds on which such assistance would be desirable; and lastly, he should be careful to keep the District Superintendent promptly informed of all cases in which during trial there is apprehension of important failure, or in which charge of misconduct or inefficiency has been brought against the Police, and of the result of prosecution in all cases.

He should be selected for intelligence and probity from among the Inspectors (Circular No. 24, dated 7th August 1868) who have no separate locality, and reside ordinarily at head-quarter Stations. Whenever the business to be brought before the Court is unusually heavy, he will be assisted by one or more Inspectors of the Reserve.

The prosecution (C. O. 31 of 1868) of all cases coming up from the Railway Police belong to the special charge of Court Inspectors, and they are held strictly responsible that the prosecution on the part of the Police is conducted with due attention and care. It is also the duty of the District Superintendent himself to see after and watch the prosecution of all the more important cases coming up from the Railway Police.

The Court Inspector is also ordered to be most careful to report to the office of the Assistant Inspector-General, Government Railway Police, at Allahabad, the result of trial, and the orders passed by the Magistrate in every case sent up by Railway Police *suo motu*, or by order of the Magistrate. Charge-sheets must always be promptly returned to the Assistant Inspector-General, with the orders of the Magistrate endorsed, and even when there is no Charge-sheet, still a copy of the order passed in the case must be sent to the Assistant Inspector-General, Government Railway Police. The Court Inspectors will be held strictly responsible for the performance of their duty, and the Assistant Inspector-General is requested to bring to the notice of the Inspector-General of Police whenever this order is not rigidly carried out.

By Circular No. 52 of 1866, Court Inspectors have nothing whatever to do with the realization, receipt, or keeping any account of fines imposed by order of Magistrates. The register of fines should be kept by one of the Magistrate's Omlah, and the Magistrate will make his own arrangements for the realization of fines.

Wherever a different practice obtains, it should be at once stopped, the Police being restricted to their proper duties.

Court of Magistrate when on Circuit Duty (P. O. 26 of 1861).

The Police who attend the Court of each Magistrate when at the Sudder Station will accompany that Magistrate when on circuit duty. The Court Inspector, however, will not accompany the Magistrate in Camp.

District Superintendents should bear in mind that all prisoners in the custody of the Police pending trial are in their charge, and that so long as they are produced on the date specified, the place of their custody should be selected so as to be most convenient and economical.

The practice of dragging about with the Magistrate all the prisoners under trial before him is very objectionable and easy of avoidance. Every lock-up of a Police Station is a place of custody for a prisoner under trial, and each prisoner should be sent either to the nearest lock-up, or to that station where the case will be again brought forward. The Camp of a Magistrate is almost universally in the precincts of a town containing a Police Station. The exceptions will be very rare, and on such occasions the Police of the Court who are in attendance on the Camp should be told off for safe custody during detention.

In Central Provinces (Circular No. 147 of 1862).

I.—The duties of the Police in the Magistrate's Court are:—

1*stly*.—To bring up for trial all cases chullaned by the Police.

2*ndly*.—The prosecution, till final order of the Magistrate, of all such cases. In cases committed to the Sessions, Police prosecution ceases on the issue of the order of commitment.

3*rdly*.—To receive in Court and carry out all orders issued by the Magistrate to the Police.

II.—For these duties an Inspector acquainted with the English language and able to read and write it, has been nominated at each Sudder Station, who will, on each day of business, attend the Magistrate's Kutcherry (in which accommodation will be furnished for him) with a Staff of Police officers, the strength of which will depend upon the number of Courts in each District; usually an intelligent Chief or Head Constable, able to read and write Oordoo well, with a Constable for an orderly, should be attached to each Court.

III.—1*st*.—*Bringing up cases for trial.* It will be the duty of the Inspector, in cases sent up for trial, to see that the prisoners and witnesses are in attendance, and that property, weapons and other instruments, &c., required to be produced in Court, are ready to be produced when called for. If the case is complete, the Inspector will make it over to the Police Officer attached to the Court in which it is to be tried. The Court Police Officer will take it up at once to the Magistrate, who will note in the 4th column of the "slip" attached to the chullans the hour and date of arrival of the case in Court. If the Court be closed, the Inspector will make a note on the chullan to the effect that the case was ready for trial at such a time and on such a date, but that the Court was closed, and will then make over the prisoner at once to the Magistrate's Hawalut with a vernacular Memo. in the accompanying form, and bind over the plaintiff and witnesses to appear on the next day of business.

IV.—2*nd*.—*Prosecution of cases.* It will the duty of the Police Officer of the Court to make himself well acquainted with a case before taking it up for trial. He should understand the different facts to be proved on which the conviction of the accused hinges, and by cross-examination of the witnesses through the Magistrate extract from them all the evidence required to convict. The Police Officer may carry with him into Court his notes to guide him in the prosecution. In the more difficult and heinous cases the District Superintendent, or the Inspector who made the preliminary inquiry, should attend personally as prosecutor.

V.—3*rd*—*Issue of orders to the Police by Magistrates.* To enable District Superintendents to supervise effectually the working of their Police, it is necessary that warrants of arrest, orders for summons of

witnesses, and apprehension of offenders in cognizable cases, and all other orders issued by Magistrates to the Police, should pass through the District Superintendent's office. Except in cases of emergency, Magistrates should not communicate direct with the Subordinate Police Officers or Chief Constables in charge of Station-houses.

VI. Each Court Police Officer will be supplied with an order book, in which, there and then, he will record in half margin every order issued to the Police by the Magistrate, and obtain his signature to it at once, or the Magistrate may himself write the order in the book. The Inspector will collect these order books in the evening and make them over to the District Superintendent's Office. The orders will be carried out the same day, and a note made opposite each order showing what has been done towards executing it.

Memo. of Prisoners lodged by the Police in the Magistrate's Hawalat, District, on the

Name of Prisoner and Father's name.	Caste.	Inhabitant of	Crime charged.	REMARKS.

By Central Province Bk. Circular VI of 1866, whenever a District Superintendent, by watching a case in Court, sees a witness is wanting, he should tell the Chief Constable of the Station-house near which the witness resides to summon him and ascertain if his evidence is material, if so, to forward him on recognizance. In cases requiring delicate handling, District Superintendents might, with advantage, go out themselves and do so.

In the Punjaub (Circular No. 60 of 1862)

The Court Inspector will, generally, only attend cases prosecuted in the Court of the District Officer and that of the Commissioner; but, if necessary, he should also attend cases tried in other Courts.

2. For the prosecution of cases tried in minor Courts of Sudder Stations, and for aiding the Court Inspector generally, intelligent men from the Reserve must be selected; they will act as deputies to the Court Inspector.

3. In attending the prosecution of cases, the Court Inspector, or one of his deputies, will act as follows:—

In the Panjab.

Be present with the case in the Court, at the precise time ordered by the Magistrate.

On the trial commencing, deliver the Charge-sheet and papers connected with the case to the Magistrate.

Be prepared to state briefly the nature of the case, should the Magistrate desire him to do so.

Bring forward witnesses in the order that they are called for by the Magistrate.

Should an intermediate order be passed by the Magistrate thereby preventing, for that day, any further procedure in the case, enter the said order in the Register.

Should there be other cases for trial that day, bring them up quickly, quietly, and without noise or confusion, and be careful that order is strictly preserved.

4. At the close of the day's work, Court Inspectors and their deputies will return to the Office of the District Superintendent of Police, to complete and carry out all instructions they may have received from the Magistrate.

5. The Court Inspector is responsible for the proper serving of all warrants or summonses and other processes ordered by the Magistrate.

6. The following books are to be kept by the Court Inspector and his deputies :—

No. I.—Register of "writs" for fines received from the Magistrate.

II.—Register of stolen or unclaimed property in the custody of the police.

III.—Register of all warrants for the commitment of prisoners or lunatics.

IV.—Register of prisoners under remand on request of Police, or by order of the Magistrate without request being made.

V.—Register of warrants and summonses.

VI.—Register of intermediate orders in cases.

The Court Inspector is prohibited from being in any way concerned with the feeding of prisoners under trial. The Police Department may not undertake this duty.

He is also prohibited from keeping the document commonly known as the "Diary of Witnesses." He may not regulate or despatch the district dâk. This must be left to the Magistrate.

He is responsible for, and has charge of, all property connected with cases under trial, and of all stolen or unclaimed property until the cases are settled.

Police Officers must be instructed to be careful to ensure the frequent change of the Police who have the custody of prisoners under trial, and attend at the Criminal Courts, with the object of preventing collusion between them and the District Police. As a rule, the Police who bring prisoners for trial from the various Police Stations should not have charge of the said prisoners during the trial, as they may otherwise exert some sinister influence to the defeat of justice,—such of the police as are not required to give evidence in the case must be sent back to the station they came from with the least possible delay.

Examination of complainant and witnesses for prosecution.

190. When the accused person appears or is brought before the Magistrate, or, if his personal* attendance is dispensed with, when the Magistrate† thinks fit, the Magistrate shall take‡ the evidence of the complainant and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

* S. 151.
† S. 6, n. (a).
‡ S. 331.

See s. 186, for the right of an accused person to be defended.

A bond should always be taken on the occasion of each remand from the accused directing him to appear either personally or (if Magistrate see fit) by agent. The agent's appearance cannot be secured by such bond, the accused alone can be proceeded against if the bond be forfeited. (Bomb. H. Ct. V, 1864, Lallubhai Jassubhai.)

CH. XV. ss. 190, 191.

There is no appeal against a Magistrate's order which enjoins the personal attendance of the accused. Cal. H. Ct. 567 (1862). Before a Court of Session the accused must appear in person.

See ss. 331 *et seq.* for examination of complainant and witnesses, and ss. 350, &c., for securing their attendance.

Use of Vernacular language enjoined.

The Calcutta Court (C. O. 8 of 1872) consider it essential, in order to the inferior tribunals attaining their full measure of usefulness, that the language of those tribunals should be that of the great bulk of the people within their jurisdictions, and that the belief and practice to the contrary should be steadily discouraged.

Pleaders and Mookhtears who practise in the local Courts should be enjoined to abstain from the employment of foreign terms for which the vernacular possesses equivalents in daily use, and to draft petitions and other documents in such language as their clients can readily comprehend.

The proceedings of the Courts, with the exception of those technical words which are of necessary occurrence, should be composed in a style such as would be adopted by persons of good education resident in the district.

It is too common a practice with mohurrirs and other persons employed in recording oral testimony, instead of taking down the actual words of the witness (as nearly as a simple adherence to grammar will permit) to render, as it were, what he said into language which the writer considers elegant or appropriate,—that is to say, into the Court jargon. In this way not only is the witness, if an ignorant person, perplexed when his supposed statement is afterwards read over to him, but from one witness being made to speak exactly like another, all characteristics of distinct testimony are lost, and the evidence, when afterwards referred to, loses much of its effect.

Examination to be in presence of accused.

* S. 331.

† S. 151, n.; s. 186.

191. The complainant and the witnesses for the prosecution shall be examined* in the presence (*a*) of the accused person, or of his agent† when his personal attendance is dispensed with and he appears by agent.

(*a*). Both complainant and witnesses for the prosecution must be *bonâ fide* examined in the presence of the accused; it is not enough to read over depositions given by them at some former trial and then allow the accused to cross-examine them; each accused person has a right to hear all that can be said against him in his presence, and he cannot waive that right save by confession or admission of guilt. For the manner in which the depositions are to be recorded, see ss. 331, &c.

Still more irregular, if possible, is the following:

A, B, C and D had a fight with Z and others. In this D received a sword-wound, of which he died subsequently; and Z also received serious injuries. A and B were committed for trial in respect of injuries done to Z. Z was committed for trial charged with causing the death of D.

The Sessions Judge first tried A and B, who were found guilty. As soon as their trial was over, Z was put on his trial. The jury was composed of the same persons who tried A and B, and the Judge apparently considering that all the evidence recorded in the case of A and B might be deemed as imported bodily into the second and fairly used as evidence against Z. He therefore took no fresh record

and on the first found Z guilty. It is needless to add that the whole proceedings were quashed—Zulfukar Khan, B. L. R., VIII, App., p. 21.

Witnesses should be examined, as far as possible, on the day fixed for their appearance, and if it be impossible to finish the evidence of all of them on that day, the evidence of the remainder should be taken as soon as the Court sits on the following day.

In Oudh, no Police Officer, European or Native, can put questions to a witness except with the consent of the Court, and through the Judicial Officer.

Should the accused not appear on the day fixed, a second date should be fixed for the hearing of the case, and the complainant and witnesses informed of it.

Accused may cross-examine.

The accused person or his agent* shall be permitted to examine† and re-examine his own witnesses and to cross-examine the complainant and his witnesses (*b*).

* S. 151, n.; s. 186.
† S. 57, n.

(*b*). A complaint under this Chapter can never be withdrawn, but in some cases composition of the offence may be allowed—see s. 188. Nor can it be struck off the file because the complainant does not attend—Jugroop Ugrabee, N. W. P., 16th December 1871; see also s. 195.

An accused should be allowed, at preliminary inquiries before a Magistrate, to cross-examine the witnesses; but whether the accused himself shall be examined upon the matter of the charge by the Magistrate, is left entirely to the discretion of the Magistrate, and such discretion should not be exercised when the Magistrate thinks that the evidence for the prosecution does not disclose any proper subject of criminal charge against the prisoner. (Shama Sunkur Biswas and Shama Churn Bose, W. R., X, 25.)

It is necessary to a proper preliminary inquiry that the accused (or, under certain circumstances, his agent) should be present; that the witnesses whose evidence is to be the foundation of the commitment should be examined before him; and that he should have the opportunity of cross-examining them. It is essential, too, in a case of perjury, that he should know at what period he ceased to be a witness, and his position was changed to that of the accused. (Kalichurn Lahooree, W. R., IX, 54.)

A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case, so long as the parties are not misled, and the proper procedure is observed. He may recall an order which he finds to be wrong, and substitute any other which he may think right under the law. (Kalidass Bhuttacharjee *v.* Mohendro Chatterjee, W. R., XII, Cr., 40.)

Power of Magistrate to summon and examine any person.

192. The Magistrate may, at any stage of the proceedings,‡ summon and examine§ any person whose evidence he considers essential to the inquiry,‖ and recall and re-examine any person already examined.

‡ S. 350.
§ S. 331.
‖ S. 4.

CH. XV. ss. 192, 193.

As regards summoning a Native lady of rank, see note, s. 359.

It is a standing order in Oudh that Police Officers cognizant of the story of a heinous crime are to come to Court; they are not to be detained unnecessarily, but their evidence taken at once; if they are wanted for the Sessions, they can return on the day appointed.

Examination of accused.

193. The Magistrate may, from time to time, at any stage (*a*) of the inquiry* and without previously warning the accused person,† examine him, and put such questions to him as he considers necessary.

* S. 4.

† Ss. 342, 346.

The accused person shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them, but the Magistrate shall draw such inference as may to him seem just from such refusal.

EXPLANATION.—The answer given by an accused person may be put in evidence against him, not only in the case under inquiry,* but also in trials* for any other offences, his replies may tend to show he has committed.

The discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, not to drive him to make self-criminating statements. (Virabuddra Gaud, *ex parte*, 1 Mad. Rep., A. C., 199.)

A Magistrate is bound to file with the record any explanation that a prisoner wishes to make. (Kristochunder Ghose, W. R., II, 58.)

(*a*). The Calcutta High Court has pointed out (Circular 13, 1864): "Although the Code of Criminal Procedure does not make it *imperative* on a Magistrate to examine an accused person at any stage of the inquiry, before committing him to stand his trial at the Court of Session, the Court think it necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the inquiry. In those few and exceptional cases in which the guilt of an accused may be beyond reasonable doubt, the practice in force may be permitted without risk; but inasmuch as by ss. 195, 196, it is discretionary with a Magistrate to commit or to discharge an accused person, according as he finds that the evidence is, in his opinion, sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give, when, after hearing all the evidence against him, or at any other time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation, it being clearly explained to the accused that it is at his option to answer such questions or not. The Court, however, desire to explain that, in issuing these directions, they in no way sanction any proceedings of an inquisitorial nature."

It is undesirable that a Magistrate should ask questions of a prisoner when there is no *primâ facie* evidence of his having committed an offence—(1 B. L. R., 16, Shama Sunker); so until a complaint has been made, an examination should not be recorded, but an admission of guilt may.

A person of unsound mind and incapable of making his defence, should NEVER be examined in this way. (Cal H. Ct. C. O. 14, 1864.)

The answer of the accused, if used against him, must be taken in its entirety. The accused is *never* to be sworn. See s. 345.

In Oudh it has been rightly ordered that no Police Officer, European or Native, is to put questions to the accused; this does not forbid his suggesting questions which, with the consent of the Court, may be put through the Judicial Officer.

This section is considerably in advance of English Criminal Procedure, and Mr. Stephen has ably pointed out the advantages the Indian method of asking questions from the accused holds out both to the Judge and to the accused. Too often in India this section is looked upon only as a means of getting the accused to admit something against him, or as a means of curtailing the labor of the prosecution. Such, however, was not, we may safely aver, the motive with which this section was inserted in the Code from the very first. Interrogation to an innocent accused may often be the means of saving him from unmerited punishment. Thus to quote from the abovementioned lawyer's work on Criminal Law:

"An innocent man may, by forgetfulness, hurry, confusion, or nervousness, lose the opportunity of saying something material to his defence for want of the question which would bring it out. It appears humane and forbearing to leave accused men entirely free to speak, or to be silent, and to abstain cautiously from everything that can intimidate or influence them; and no one can doubt that the intention corresponds with the appearance. The result of the practice is less favorable to prisoners than its appearance and its intention. An ignorant and stupid man is put at a greater disadvantage by being left entirely to himself, than he could be by being examined.

"Whether a prisoner is defended by Counsel or not, his silence is unfavorable to him, if innocent. When he is defended, he may suffer almost equally from the unskilfulness or from the ingenuity of his Counsel. If his advocate, from forgetfulness, or want of skill, fails to explain a suspicious circumstance, it weighs heavily with the Court and the Jury; if he puts forward a complete and consistent answer, the Jury look upon it with suspicion, because it proceeds from a man whose profession it is to frame plausible explanations of suspicious facts. If, on the other hand, the prisoner is undefended, his position is, at times, absolutely pitiable; the difficulties with which such a man labors require some familiarity of illustration."

The writer then passes on to take an illustration from the common run of criminal trials in England. His words are, if possible, more vividly true of scenes enacted over and over again in Indian Cutcherries. "Ten or twelve awkward clowns, looking, as an eminent advocate once observed, like over-driven cattle are crowded together in the dock." Their minds are confounded by formulas about challenging the Jury, standing on their deliverance, and pleading to the indictment; the case is opened, and the witnesses called by a man to whom the whole process has become a mere routine, and whose very coolness must confuse and bewilder ignorant and interested hearers. After the witness has been

examined, comes a scene which most lawyers know by heart, but which I can never hear without pain. It is something to the following effect:—

Judge.—"Do you wish to ask the witness any questions?"

Prisoner.—"Yes, Sir. I ask him this, my lord, I was walking down the lane with two other men, for I'd heard ——."

Judge.—"No, no, that's your defence. Ask him questions. You may say what you please to the Jury afterwards; but now you must ask him questions."

In other words the prisoner is called upon, without any previous practice, to throw his defence into a series of interrogatories, duly marshalled, both as to the persons to be asked, and as to the subjects to be inquired into; an accomplishment which trained lawyers often pass years in acquiring imperfectly. After this interruption has occurred three or four times in the course of a trial, the prisoner is not unfrequently reduced to utter perplexity and forgetfulness, and thinks it respectful to be silent.

Hardly any ignorant person can tell a story of the simplest kind without irrelevant details, and omissions caused by the assumption that what they know themselves is equally well known to others. Judges often have not the patience to sift out the grain of wheat from the bushel of chaff, which are, on such occasions, put before them. A few questions would constantly clear up the whole. * * * * * Judges often give broad hints to prisoners, which, if they had been put in the form of a direct question, might have been invaluable; but which, as it is, are thrown away upon ignorance, fear, and stupidity. Let any one try to get an account of the simplest transaction from his servants or children, without asking them questions, and he will understand in a moment how valuable interrogation would be to a prisoner. Every one must be aware that, on important occasions, a very slight cause may make him forget the most important part of what he has to say; and it is probable that, when innocent men are convicted, it frequently arises from the fact, that, from ignorance or confusion, they have omitted to ask questions, or to give explanations which might have cleared their characters.

In a case tried at the Lincoln Winter Assizes in 1862, it so happened that the same men were tried three times over for substantially the same offence. They had no Counsel; and their defence on the third occasion was far better managed than on the first, and made a deep impression on several persons who heard it. They had come by degrees to understand the bearings of the evidence, and the way in which it was to be shaken by cross-examination, or explained by statements. If they had had been questioned on the first occasion, it would have been a great assistance to them, though the Judge before whom they were tried allowed them, put their questions in their own way, without any sort of interference.

In the case of Hawkins, a clergyman tried for theft at Aylesbury, Sir M. Hale asked him why he objected to have his house searched? He immediately gave a satisfactory explanation; in support of which, at the Judge's suggestion, he called a witness; if he had from ignorance or nervousness forgotten this point, it might have weighed heavily with the Jury. "Few things," it has been observed, "tell more strongly against a prisoner than his non-explanation of apparently criminating circumstances." The absence of any suggestion, either from the Judge or Jury, as to what circumstances require explanation, tells more heavily against him, if he is not defended, and that skilfully. It is further

observed that every item of the evidence is, in effect, a question to the prisoner. This is undoubtedly true, and it follows inevitably that it is only fair to point out the fact to him in a form, which admits of no mistake.

For these reasons, as well as for its obvious tendency to convict the guilty, *I think that the direct and explicit interrogation of the prisoner, both at his trial and before the committing Magistrates,* "is" *most desirable.* It would render sham defences impossible, and would cut down by the roots that bastard ingenuity which Counsel acquire in inventing defences for prisoners, which they would never think of setting up for themselves—defences grounded not on the truth of the case, but on the defects of the prosecutor's evidence."

Adjournment of inquiry and remand.

194. If, from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer (*a*) the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time, adjourn the inquiry,* and remand (*b*) the accused person for such time as is deemed reasonable, not exceeding fifteen days (*c*).

* S. 4.

(*a*). The trial of subordinates or abettors should not be delayed because the principals have not been arrested.

(*b*). When the accused is remanded, it should always be under a warrant authorizing the officer in charge of the lock-up to detain him until the day fixed for the next hearing of the case. Act XVII, 1850, will not protect judicial officers who, without good cause, delay bringing prisoners to trial. If the accused be acquitted, in such case he could bring an action for damages. (Sahoo, W. R., XI, 19.)

(*c*). Judicial Officers while on tour enjoined to be careful to notify to the parties to a suit the exact date and place of hearing, and to record the same in the proceedings. (Punjab Book Circular, No. VIII of 1871.)

The Central Provinces Government, in Book Circular No. XXIX of 1867, direct that every order should be inserted at that place in the proceedings which records the stage of the enquiry or trial at which it is pronounced.

On the first page only the order preliminary to commencement of enquiry will find a place.

Instead of detaining the accused person in custody during (*d*) the period for which he is so remanded, the Magistrate may release him, upon his entering into a recognizance,† with or without a surety or sureties, at the discretion of such Magistrate,‡ conditioned for his appearance before such Magistrate‡ at the time and place appointed for the continuance of such examination.

† S. 391.
‡ S. 6, n.

(*d*). Remanded prisoners should be made over to the Magistrate's lock-up. This in many cases is a building attached to the District Jail. The rules for their treatment are as follows:—

All under-trial prisoners shall be confined in separate wards, and be kept entirely apart from convicted prisoners.

They shall not be subjected to any rules of prison discipline, beyond what are absolutely necessary for cleanliness, health, safe custody, and good order.

They shall be supplied with uncooked rations, according to the existing scale of prison dietary, and be furnished with the means of cooking their own food.

They shall be supplied with bedding according to the scale specified in the margin, for the safety and proper care of which the Native Officer in charge of the prisoners, whether Jail Darogah or Police official, should be held personally responsible. (Govt., N. W. P., No. 305A of 1867.)

Bedding for each prisoner.

One blanket during the rainy season,—namely, July, August and September.

Two blankets in the cold season, say from 1st October to the 31st March.

One piece of ordinary tát bedding.

Lock-ups in N. W. P.

Lock-ups will be placed in charge of the Sub-Divisional Court Sub-Inspectors and Head Constables (as the case may be), who will submit to the jail department, under countersignature of the Sub-Divisional Officer, the usual returns. During the temporary absence of the Court Sub-Inspector or Head Constable on duty with the Sub-Divisional Officer, he will make over temporary charge to the Head Constable of the guard. These Officers will conduct their duties under the orders of the Sub-Divisional Officer.

2. The watch and ward of all lock-ups which are in a secure state may remain in charge of one Head Constable and two Constables. This Head Constable will, in most cases, be also available for the work of the treasury guard. Under the above arrangements, a sentry will not be furnished at the lock-up night and day. During the day one Constable must always be present at the lock-up, and at night, after seeing the prisoners safely inside, the building will be securely closed.

During the night both Constables must be present, one of them occasionally going round to see that all is correct. The Head Constable will, as a rule, remain at the Sub-Divisional treasury, but he will occasionally visit the jail at night. As there is generally a Police station close to Sub-Divisional Head-Quarters, such stations will provide for the duty of escorting prisoners to and from the Court.

Lower Bengal.

3. It will be the duty of the Sub-Divisional Court Officer, or Officer in charge of the lock-up, to apply for and obtain such reinforcement of the guard as will enable a sentry to be on duty night and day, whenever there is in hajut any notorious criminal for whose security he has reason to feel anxious.

3A. When the Head Constable in charge of the lock-up is absent from his post, he should make over the keys to the senior Constable, who will remain in charge during the absence of the former. Care must be taken that the Head Constable in charge of the treasury and lock-up guard at a Sub-Divisional station is selected for his intelligence and efficiency.

4. Applications for the transfer of convict cooks and sweepers, to replace those whose sentences are about to expire, should be made to the Inspector-General of Jails at least a month before the date of release.

In the Panjab Circular Orders, No. 103 of 1861 and No. 26 of 1864, a prisoner brought for trial to the sudder station, and arriving when Magisterial Courts are open, must be brought at once before the Magistrate; if the case is complete, and the Magistrate is unable to try the case that day, he will pass an order directing the prisoner to be placed in the lock-up attached to the Magisterial department, stating when he is to be brought up for trial. If the case is incomplete, the Police will ask for a remand of the prisoner for so long as they require for further investigation. The remand being obtained, the prisoner will be at once placed in the Magisterial lock-up, the case, however, remaining on the Police returns as "prisoner on detention under remand."

Prisoners arriving when the Magisterial Courts are closed will be placed in the lock-up attached to the sudder Police station. In this case, before twenty-four hours have elapsed after arrival, the prisoners must be brought before the Magistrate for trial. If it should so happen that, owing to a holiday, the Magisterial Courts are closed, it will be the duty of the Police Officer to report the case to the Magistrate, and obtain his order to place the prisoner, whether for remand or for trial, in the lock-up attached to the Magisterial department; this must be done within twenty-four hours of their arrival at the sudder station. It is of the utmost importance that Police Officers are very particular on this point, not only because it is expressly ordered in the Code, but because it is essential to the ends of justice.

Panjab.

The Hawalát, or as it is now called the lock-up, attached to the Magisterial department, belongs solely to that department; and in it are detained prisoners pending trial by orders of the Magistrate, and prisoners on remand. Police Officers may not place any one in this lock-up, nor take any one out of it, without the written orders of the Magistrate. The Police guard the outside of this lock-up, and have nothing to do with the inside. A turnkey, paid by the Magisterial department, has charge of the prisoners, and the key of this lock-up must never be kept by any member of the Police department.

When wounded prisoners are placed in the jail hospital, under the charge of the Police, an order for their retention must be obtained from the Magistrate, within twenty-four hours of their being placed in the said hospital. As a general rule, they should be brought up for trial directly the medical officer pronounces that they can be moved without injury to life.

Whenever it is necessary to open the door of a lock-up, the sentry must summon the senior officer present in charge of the station; the door may never be opened either to receive or to let out prisoners, or for any other reason whatever, except in his presence, and by his permission. On him will rest the responsibility of the act, and of taking such measures that prisoners do not thereby have means of escape.

Sentries may, on no account, give themselves, or permit to be given to prisoners, any food of anything whatever, unless the senior officer present in charge of the station grants permission for such to be done. Offensive weapons or instruments for effecting escapes may be concealed in food thus given: the officer therefore granting the permission must satisfy himself such is not the case. See further App. "*Remands*."

EXPLANATION.—After commencing the inquiry,* if sufficient evidence has been obtained to raise a

* S. 4.

CH. XV. s. 194.

suspicion that the person accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable ground for remand (*e*).

(*e*). To avoid unnecessary delay, and to ensure regularity, Magistrates in Oudh and the Central Provinces are directed to keep up Cause Lists in the following form:—

COURT OF

*Criminal Cause List for the month of*_____187

Date.	New Cases received from Police with Disposal thereof.	Cases Appointed.				
		Plaintiff or Appellant.	Defendant or Respondent.	Charge.	Purpose of Appointment.	Remarks showing how the Case was disposed of.
1	Government v. Ram Sing and Bhoop Sing.	Ram Buksh.	Jye Sing.	Assault.	For trial.	Defendant convicted.
	Robbery. Certain evidence taken, adjourned to 6th instant for further evidence.	Government.	Chetoo.	Grievous Hurt.	For examination of complainant.	Postponed to 10th instant, pending appearance of wounded man.
2		Tej Sing.	Ilahee Buksh.	Criminal Trespass	Defendant to answer complainant.	Defendant did not obey summons; warrant issued for his apprehension.
3		Ramoo.	Narayun.	Assault.	For trial.	Postponed to following day, from press of business.
4		Ditto.	Ditto.	Ditto.	Ditto.	Complaint dismissed.

(1.) As soon as a case is appointed for hearing, it will be entered in the Cause List. The list will show at once the date on which the case is appointed to be heard, and for what purpose the appointment has been made.

(2.) The Cause List will be written in the vernacular language of the district. It should be prepared on good paper of large size, and be fastened on a board, which will be always hung up in a conspicuous place outside the Court, so that all parties may be able to see at a glance what cases are to come off on each day.

(3.) A new list will be prepared at the close of every month. The paper should be ruled for the whole of the ensuing month, sufficient blank space being left for each day for which no causes or a small number of causes have been appointed. Whenever a case is appointed for hearing, it will be inserted at the proper date. As each case is

called on and heard, it will be scored out, and the Moonserim or other officer, specially entrusted with the duty, is to be held responsible that this is regularly done. At the end of the month, all pending cases will be transferred to the new list for the ensuing month.

(4.) If cases should be very numerous, it may be necessary to renew the lists more than once every month.

(5.) The lists are not to be destroyed, but when taken down they are to be carefully preserved and filed for reference, so that any superior officer can always see at a glance how the work has been disposed of.

(6.) In the last column of remarks, it must invariably be noted what became of the case on the day appointed, so that every case may be traceable in the list from the date of first appointment until final decision.

(7.) Cases must ordinarily be taken up in regular order. When for any special reason this order is departed from, the reason must be noted in the last column of the Cause List.

(8.) It will generally be desirable that European officers should have a duplicate of the Cause List in English, which they should keep before them for their own information. This, however, is not insisted on when an officer finds that the vernacular Cause List gives him all the information that he requires in a completely satisfactory manner.

When accused person to be discharged.

195. When a Magistrate finds (*a*) that there are not sufficient grounds for committing the accused person to take his trial* before the Court of Session or High Court, or for remanding† him, he shall discharge him (*b*), unless it appears to the Magistrate that such person should be put on his trial* before himself, in which case he shall proceed under Chapters XVI, XVII or XVIII of this Act.

* S. 4.
† S. 194.

(*a*). A Magistrate ought not to discharge an accused without taking the evidence of the witnesses for the prosecution named in the petition of complaint—Saroda Mookopadhya, W. R., VII, 47.

Where the evidence showed that an offence beyond the jurisdiction of the Magistrate had been committed, the Calcutta High Court set aside the conviction for a lesser offence, remarking that Magistrates are not at liberty to pass over material parts of the evidence in cases before them, and so to withdraw cases from the cognizance of the proper tribunals—Ramtahal Singh, W. R., V, 65.

(*b*). An order of discharge under this section is not appealable. Cases dismissed under this section can be revived on receipt of fresh evidence, and under s. 297, the High Court can order persons discharged under this section to be committed for trial.

The Calcutta High Court, in their C. O. I of 1867, lay down that a Magistrate would be wrong in committing an accused person for trial to the Court of Sessions if the evidence given before him upon a preliminary inquiry satisfies him that the act or omission charged against the accused is brought within one of the general exceptions of the Penal Code. See however s. 424 of this Code.

CH. XV. s. 195.

By Circular Order, S. N. A., N. W. P., 16 of 1860, Magistrates are prohibited from keeping cases long pending in the hope of obtaining fresh evidence. Persons discharged by Magistrates from want of evidence may be committed to Sessions on further evidence being forthcoming.

Where no charge in writing has been drawn up, and the prisoner has not been asked to make his defence, the Magistrate, if he thinks that no offence has been proved, can only discharge, and not acquit the prisoner. Nor can the Magistrate acquit a prisoner whom he has no jurisdiction to try—Robert Sheriff, W. R., VI, 13; also Bipro Doss, VIII, 45.

EXPLANATION I.—The absence of the complainant, except when the offence may lawfully be compounded,* shall not be deemed sufficient ground for a discharge, if there appear other evidence† of a nature rendering a trial‡ desirable.

* S. 188.
† S. 4, n. (*d*).
‡ S. 4.

EXPLANATION II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be made until the evidence of the witnesses named for the prosecution has been taken (*c*).

(*c*). The following arrangements have been made by respective Local Governments for enabling Police officers to have full information about cases sent up by them for trial:—

A Police officer should be allowed access to the record of a case, when his object is to ascertain what errors he has committed in getting it up. Moreover, in the event of a Police officer wishing the Magistrate to point out to him what errors he has committed, the Magistrate shall give every information in his power on the subject.—Cen. Prov. Cir., No. 132 of 1862. This is in addition to the slip by which the Court Inspector gives notice of the disposal of each case.

Communication of final Orders to local Police.—All final orders in cases sent up for trial, whether at the sudder station or at subdivisions, should be communicated to the officer who held the inquiry. Nothing can be more discouraging to a Police officer who believes he has sent up a true case on good and sufficient evidence, than to receive from the Court Inspector only a brief notice that the case has been dismissed. Where errors on the part of the local Police arise from want of experience or insufficient knowledge of the laws of evidence, much good would result from a careful explanation of their error by the District Superintendent. In cases when the acquittal is due to less satisfactory causes, it is more incumbent on the District Superintendent promptly to mark his disapproval of the result by a timely warning addressed to the officer by name.—Bengal Police Circular No. 11 of 1871.

The Agra High Court direct that the Charge-sheet A shall, in every case, be returned to the Superintendent of Police, on the conclusion of each trial, or of the preliminary inquiry (in cases triable by the Court of Session).

In lieu of the Charge-sheet A thus returned to the Police Department, the Court are pleased to prescribe the adoption of the following uniform Form of "*Roobocaree*," or vernacular proceeding, to serve as a basis for the foundation of each case, in which the necessary particulars relating to the preliminary history of the case will be recorded:—

FORM.

Proceeding of the Criminal Court of

Present: , Esq., *Magistrate.*

Dated 18

The case specified below, forwarded by_____ Superintendent of Police, has been received, accompanied by the parties, therein concerned.

1	2	3	4	5	6	7	8	9	
								At the Station-House.	
Number of Charge.	Charge and Amount of Property involved.	Date and Hour when brought to Station, and by whom.	Name, Address, and Occupation of Person charged.	Name, Address and Occupation of Person making the Charge.	Witnesses' Name and Address.	Accused taken into Custody by whom, and at what Hour.	Property found on person, or elsewhere, and by whom.	Detained.	Admitted to Bail.

Circular Order 35 of 1862.

Magistrates to record a notice in the column of remarks in the Charge-sheet, where the Police arrest and forward persons against whom the evidence is not sufficient.—Agra Circular Order 11 of 1862.

When accused is to be committed for trial.

196. When evidence* has been given before a Magistrate (*a*) which appears to justify him in sending (*b*) the accused person to take his trial† for an offence which is triable† exclusively by the Court of Session or High Court (*c*), or which, in the opinion of the Magistrate, is one which ought to be tried† by such Court, the accused person shall be sent for trial† by such Magistrate before the Court of Session or High Court as the case may be (*d*).

[Explanation.—A commitment once made by a competent‡ Magistrate can be quashed by the High Court only, and only on a point of law.]

* S. 6, n.

† S. 4.

‡ Ss. 21, 23, 25, 26, & 32.

(*a*). Assistant Commissioners cannot *commit* cases in any instance to officers invested with special powers under s. 36. They must send cases as under this section to the Court of Session.—Punjab Circular Order dated 2nd June 1862; C. P. Book C. O. 1 of 1863.

(*b*). Information of commitments should be given without delay to the Court of Session through the Magistrate of District in the printed form prescribed for that purpose by the High Court.

(*c*). The following are the rules in Lower Bengal relating to commitment made to the High Court at Calcutta:—

It has been represented to the Court that Magistrates and Justices of the Peace, after making commitments to the High Court in its Original Criminal Jurisdiction, do not promptly send the records of cases to the Clerk of the Crown, but frequently delay doing so until the commencement of the Sessions at which the cases are to be tried. Such a practice causes great inconvenience to all concerned, and deprives the Judge generally of the opportunity which he ought to have for looking over the depositions of the witnesses before the case goes to trial. This Court is not aware of any reason for this delay in sending the record to the Clerk of the Crown, and will not fail to notice with its displeasure any such delay on the part of any Magistrate or Justice of the Peace. A copy of the warrant of commitment should always form part of the record which is sent to the Clerk of the Crown.

2. All witnesses should be bound, in the usual form, to attend at the Court-house on a day specified, which should be the *first day of the Sessions* for which the prisoner is committed, and which should be the next following Sessions after the commitment, if there is a sufficient interval of time between the commitment and the next Sessions, and if not, then the next following Sessions. See Bengal Government Rules of 1860, quoted below.

3. In order to ensure uniformity, the depositions of witnesses should be invariably recorded on foolscap paper and in a legible handwriting, the lines not being too closely written.

4. The following heading should commence each deposition:—

The deposition of taken under the solemn affirmation prescribed by Act V of 1840, before me Justice of the Peace, this day of .

5. To save unnecessary labor, the Court thinks that it would be well if Officers requiring such forms applied in the proper quarter for a supply of printed headings of this description.

7. The Clerk of the Crown states that, not unfrequently Justices apply to him for advice and direction on various points, as, for example, respecting the course of the investigation, the sufficiency of the evidence, the number of the witnesses to be sent down, the selecting of some, and other similar matters of detail. The Clerk of the Crown represents that generally he refers such applications to the Solicitor to Government for reply, that Officer being able to obtain the opinion of the Law Officers of the Government. The Court is of opinion that it would be better, in such cases where Justices require advice or direction (except as to what merely concerned the office of Clerk of the Crown), that they should apply direct to the Solicitor to Government. The Clerk of the Crown has suggested that, at the examination of the prisoner, the Officer in whose charge the prisoner, if committed, will be sent down, should be present, in order that he may be able to prove the examination and

signature of the prisoner to it, as in some cases this proof is required to establish the fact of British origin, on which the jurisdiction to commit and try depends.

Much inconvenience is often occasioned to witnesses from the mofussil, through their want of information as to the means of getting quarters, if they are poor and strangers, and as to the means of obtaining their expenses. They should be informed that the Commissioner of the Police of Calcutta has charge of these matters, and not the Clerk of the Crown.

Rules issued by Bengal Government in 1860:—

1. European prisoners, when committed, must be sent with their warrants of commitment to the Superintendent of the Presidency Jail of Calcutta to the custody of the Sheriff, and a letter should be sent to the Commissioner of Police in Calcutta, giving the name and crime of the prisoner, as also the date and mode of forwarding him to Calcutta.

2. The depositions taken in the case must be sent at the same time to the Clerk of the Crown, and the exhibits, such as swords, bludgeons, or stolen property, in charge of the Police Officers who can testify to them.

3. All witnesses must be bound down in recognizances to attend at the Supreme (High) Court in Calcutta at noon on the first day of the first Sessions.

4. The Magistrate should intimate to the Commissioner of Police by letter the names of the witnesses, and direct them all, European and Native, immediately on their arrival in Calcutta to leave their names and addresses at the Calcutta Police office, where they will receive any information or assistance they may require.

5. The witnesses, on the conclusion of the trial, will receive their travelling expenses, on application to the Commissioner of Police.

6. Magistrates should be careful that, while they send down those witnesses who may be necessary for a proper investigation of the case, none others should be compelled to leave their homes. The evidence of Native witnesses to sooruthals and such documents are never taken in the Supreme (High) Court. For instance, if the Civil Surgeon has examined the body of the murdered or wounded man, his evidence will be sufficient, without that of the Natives who saw the wounds in the Darogah's mofussil investigation. The presence of obviously unnecessary witnesses invariably calls down the animadversions of the Judge of the Court.

The Calcutta High Court, in Circular No. 8, 1866, ordered that the warrant of commitment ought always to be delivered to the Officer in whose custody the prisoner is sent, in order that he may deliver it with the prisoner to the Superintendent of the Jail as his authority to receive and detain the prisoner. In addition to the warrant of commitment, a warrant should be directed to the Police Officer in charge of the prisoner, and should direct him to take the prisoner and deliver him to the Superintendent of the Presidency Jail.—Cal. C. O. 85, 1860.

The High Court, N. W. P., in their Circular Order 6 of 1864, adopted the whole of the Calcutta Circular Order 5 of 1864. They also direct in their Circular Order 9 of 1866 that, in all cases where Europeans in the districts are charged with offences for which they will be tried in the Supreme Court, if time will admit of it, the depositions should be forwarded to the Government Advocate, in order that committing Magistrates may receive the advice and suggestion of that Officer on the evidence which is to be adduced at the trial.

The deposition of a European witness should be recorded in English, or in the language in which it is delivered. A European defendant, filing his pleadings and petitions in the vernacular language on the prescribed stamp, may be permitted to add translations thereof in English on unstamped paper. It is not the duty of the Court to furnish the defendant with translations; he must procure a person duly qualified to interpret for him.—*Cons.* 1035.

Prisoners, when committed for trial to the High Court, should be warned that only those of their witnesses will be paid their expenses whom the presiding Judge considers were material witnesses.—Agra High Court, 2 of 1867.

When it is probable that a commitment will be made while a Criminal Session of the High Court is being held, Justices of Peace are at once to apprize the Court by telegram that they may make arrangements for disposing of such commitment at an adjourned Session—C. O. 3 of 1870.

Whenever Justices of Peace make a commitment to the High Court, they will at the same time inform the Government Advocate, forwarding a copy of the record with copies of all exhibits.—C. O., N. W. P., 44A of 1869.

For Lower Bengal Sessions Rules, see further App., "Sessions Rules."

(*d*). By Agra S. N. A. 17 of 1864, Magistrates are instructed that, when a commitment has once been made by a Subordinate Magistrate, they have no power to supervise or in any way interfere with it before commitment. However they are authorized to withdraw or refer such cases by s. 47.

Also that, when several persons are charged with offences of various degrees, arising out of one act or transaction, *all* implicated therein, against whom sufficient evidence is forthcoming, shall be committed to the Court of Session, if an offence beyond the cognizance of a Magistrate, or one which, in the opinion of a Magistrate having jurisdiction in the case ought to be tried by a Court of Session, be chargeable against *any* of the accused.—C. O. 14 of 1862.

Held by Calcutta High Court:

There had been a riot and fight between two factories, and members of one party (A) were charged with the murder of the leader of the other party (B), and members of the other party (B) were charged with causing grievous hurt to the leader of (A). *Held*, that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had one common object.—Sheik Bazu, W. R., VIII., 47.

A Sessions Judge has no authority to interfere and direct a committal in the case of a conviction for assault under s. 352, or of hurt under s. 323 of the Penal Code, both of them being offences triable by the Subordinate Court.—Ramtohul Singh, W. R., V., 12.

A Magistrate should state in the grounds of committal the particulars of the case.—Queen *v.* Ishur Manjee, W. R., V., Cir., 17.

It is not illegal for a Magistrate to commit an accused to the Sessions without examining him or his witnesses.—Hurnath Roy, W. R., II., 50.

A committal once made of an accused person by a Magistrate to the Sessions, cannot be annulled by his allowing the prosecutor to file a compromise.—Salim Sheik, W. R., II., 57; Cowell's Indian Digest.

When commitment to be to a High Court.

197. If such accused person (not being a European* British subject) is accused of having committed an offence conjointly with a European British subject who is about to be committed for trial,† or to be tried,† before the High Court on a similar charge,

and the evidence appears to justify the Magistrate in sending the accused person for trial,†

he shall commit such accused person to take his trial† before such High Court, and not before a Court of Session; and such High Court shall have jurisdiction to try such person.

* S. 71.

† S. 4.

EXPLANATION.—A commitment once made by a competent‡ Magistrate can be quashed by the High Court only, and only on a point of law.

This explanation applies also to section one hundred and ninety-six.

‡ Ss. 21, 23, 25, 26, & 143.

See note to s. 231.

Contents of charge.

198. When the Magistrate determines (*a*) to send the accused person before the Court of Session or High Court for trial,§ he shall, after the evidences has been recorded, make a written instrument‖ under his hand and seal, declaring with what offence the accused person is charged, and shall direct him to be tried§ by such Court on such charge. He shall also record (*b*) his reasons for committing such accused person.

§ S. 4.

‖ Ss. 439, &c.

(*a*). Where the evidence for the prosecution is good, a committal is necessary; where doubtful, it is still expedient; but where manifestly weak or false, no committal should ever be made.

When several persons are charged with offences of various degrees, arising out of the same act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if an offence beyond the cognizance of a Magistrate, or one which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by the Court of Session, be chargeable against *any* of the accused. (Agra Sud. Ct. Cir. 14, 1862; Cal. High Ct. Cir. 16, dated 27th May 1862.)

Judge Jackson, in case of Kishto Doba, S. W. R., XIV, 16, made the following remarks about hasty commitment, which are well worthy the perusal of Magistrates just empowered to commit:—

CH. XV.
s. 198.

Duty of Magistrates making Committals.

I have for some time felt, from examination of criminal trials, that many Magistrates are too hasty in making commitments, or rather that they do not make the thorough inquiry which, I think, they ought to make previous to commitment. In a case of murder more especially, there can be no doubt that it is the duty of the Magistrate to sift every fact bearing on the case, in order to ascertain whether the accused is guilty or innocent, and to examine the accused on the facts which bear against him. One of the points of the evidence in this case which led to presumption of the accused's guilt was that he had been absent about the time the murder was committed. His statement as to where he was at the time should have been recorded, and should also have been thoroughly inquired into. It is not sufficient to say that the accused might bring witnesses to prove his innocence at the trial. It is possible the accused may not know the names of the witnesses; and if the witness can give evidence in his favor to exculpate him, he should not be committed. A long time elapses before a trial at the Sessions comes on, and witnesses cannot then give as clear evidence, more especially as to time and date, as when the facts have only lately occurred. I think every inquiry should have been made previous to commitment, to ascertain not only whether there was presumption of the guilt of the accused, but also whether he was innocent. It is the duty of the Police and the Magistrate not only to bring the parties suspected of being guilty to trial, but also to ascertain whether the suspected can clear themselves from the crime of which they are accused. I believe the discretion given by this clause is much abused. It may be applied in certain cases; but in serious charges of murder, when the life of the accused is at stake, I think this clause should not be acted upon, because no certainty of the accused's guilt can arise until his defence is negatived, and proof that his defence is false is frequently very strong evidence in favor of the prosecution. If the result of the inquiry into the defence leaves the matter in doubt, it is the duty of the Magistrate to commit and leave the Sessions Court to decide which is the true story.

(*b*). These reasons should be recorded in the same way as a judgment is. (S. 461, &c.)

In a murder case, Magistrates should be careful to have the following evidence distinctly recorded:—

1*st*.—Evidence to prove the identity of the body.

2*nd*.—Evidence to prove that the body of deceased was conveyed from the scene of murder, and was handed over to the Medical Officer charged with the duty of making the *post mortem* examination.

3*rd*.—Evidence of the Medical Officer to prove the cause of death. (Cen. Prov. Bk. Cir. No. 27 of 1870.)

Copy of charge.

A copy of such instrument shall be forwarded with the record of the original inquiry* to the Court of Session before which the accused person is to be tried;* and a copy shall also be sent to the public† prosecutor or other officer appointed to conduct the prosecution.

Any weapon (*c*) or other article of property necessary to produce in evidence‡ shall also be transmitted to the Court of Session.

* S. 4.

† S. 57.

‡ S. 6, n.

(c). For remarks on public prosecutors, see note to s. 57, and preface to Chapter V.

The Punjab Book Circular IX of 1870 directs that each day, when the Courts close, all property belonging to cases under trial is to be brought to the Court Inspector, who is personally to satisfy himself in respect to each article and to lock all of them up after noting them in Book No. II.

Each day when the Courts open, the Court Inspector will personally unlock the box containing the property required for the day, and deliver it over to the Assistant Court Inspector concerned.

Articles produced before Committing Magistrates, which are required in evidence at Sessions trials, should be enclosed in a parcel in presence of the Magistrate, closed and sealed with the seal of the Court. The parcel is then to be made over to the Court Inspector, who will be held responsible for producing it with the seals intact before the Sessions Judge. See s. 196, note (c).

Similar orders have been issued for Courts in the N. W. P. by Circular Order 149 of 1864, which further orders that, for the safe custody of all properties in charge of the Courts, the presiding Officer will ordinarily employ such agents as will best ensure proper care being taken of the property; bullion, coin, or jewels being sent to the treasury; cattle to the pound; and all miscellaneous property to the malkhanah. For the safe custody only of malkhanah property, the Police will be held responsible.

When a commitment is made to the High Court, such instrument, record (*d*), and such weapon or other article shall be forwarded to the Clerk of the Crown or other officer appointed by the Court; and if any part of such record is not in English, a translation thereof in English shall be forwarded therewith (*e*).

(*d*). The record of the Magistrate is to be taken to include—

First.—The proceeding by which the case is originated in the Magistrate's Court.

Secondly.—All papers showing the steps taken under the authority of the Magistrate upon the complaint; the summons, if any, and its return; the warrant and the return, or other documents showing how and when it has been executed; also any search-warrant, and the report showing how it has been executed.

Thirdly.—The report, if any, on such inquiry as that under ss. 133 and 146.

Fourthly.—The orders, if any, sanctioning the prosecution when such sanction is necessary.

Fifthly.—The order, if any, withdrawing or transferring the case from one Court to another. (Cal. High Ct. Cir. Ord. I of 1872.)

N. W. P. High Court directs that the records of all Criminal trials and inquiries, other than those disposed under Chapter XV of the Criminal Procedure Code, be arranged in the form of books, and placed between card-board covers.

Pleaders and others should be instructed that papers, not exhibits, intended to be filed in Court, should be so written that a margin may be left, and that such papers should be of uniform size.

The two or more additional pieces of paper composing documents, the matter of which cannot be comprised in one paper, as well as the various papers composing copies of judgments, should be joined at the side in book form, and not at the top. (Cir. Ord. 2 of 1870.)

The Agra Court direct, with reference to the record of important orders passed in the course of a Criminal trial, that—

Each consecutive order in a case will bear its number according to order of date, and will be signed on its date by the Officer passing it; the first line of the following order being written immediately underneath his signature, and so on to the final proceeding, which will merely give the substance of the conviction, acquittal, or commitment statement as the case may be.

Magistrate's Record.

Any order of importance, unavoidably passed upon an urzee or petition when the misl is not at hand, must still be entered in the running record, and signed by the Officer passing it, with a marginal note of the paper bearing the original order.

It is believed that both Magistrates and Appellate Courts will find the advantage of such a continuous record, showing at one view the entire chain of proceedings in each case, while interpolation or abstraction of papers will be more effectually prevented. (Cir. Ord. 785 of 1857.)

It is further enjoined that each order entered on the record shall bear a superscription, giving in full the name and the official designation of the Officer passing the order. The official designation must include, in the case of Assistants, Deputies, Moonsiffs, and others whose Magisterial powers vary, the precise powers with which they may be vested. (Cir. Ord. 13 of 1860.)

In Circular Order VII of 1862, the Agra High Court order all commitments to be made on a calendar like that on the following page.

Oudh Book Circular XVI of 1872 directs that the Calendar hitherto used be discontinued, and in future only a memorandum (new form 101) be used.

Calendar of Persons committed or held to bail by the *Magistrate of* *to take their trial before the* *Sessions Court of Zillah* *in the year* 18

1	2	2a	4	5	6	7	8	9	10	11	12b	13	14	15
Date of Commitment and Name of Committing Officer.	Number of Calendar for the Year.		Detail of Persons Committed.		Abstract of Charge.		Witnesses for Prosecution.				Abstract of Inquiry and Grounds of Commitment.	Witnesses for Defence.		
		Number.	Name, Sex, and Father's Name.	Caste and Residence.	Section of Penal Code applicable.	Offence charged and Date of Occurrence.	Number.	Name, Sex, and Father's Name.	Caste and Residence.	Abstract of Facts spoken to by the Witness.		Number.	Name and Caste of Witness.	Nature of Evidence.
6th January 1863. S. Melville, Esquire, Joint Magistrate.	5c		*d*			*f*		*d*					Prisoner No. 1, Luchmun Singh.	
		1	Luchmun Singh, son of Thakoor Singh.	Rajpoot, Wuzeerpoor, age 28*e*.	302	Murder, 25th December 1861.	1	Duleep, son of Jodha.	Rajpoot, Wuzeerpoor.	To commission of the murder.	(Here enter concisely the particulars of the enquiry and the proofs relied on by the Committing Officer for the conviction of the prisoners.)	6	Thakoor Singh, Rajpoot.	To *alibi*.
												7	Hemraj, Bunniah.	
		2	Pop Singh, son of Luchmun Singh.	Rajpoot, Futtehpoor, age 31*e*.			2	Soobhan, son of Himmut.	Rajpoot, Wuzeerpoor.	To threatening language used the day before the murder.		8	Than Singh, Rajpoot.	To character.
		3	Purma, son of Boodha.	Chumar, Futtehpoor, age 25*e*.			3	Seramul, son of Todar.	Bunniah, Wuzeerpoor.			9	Hurdeo, Bunniah.	
													Prisoner No. 2, Poph Singh	
		4	Rujoh, Female.	Chumar, Futtehpoor, age 34*e*.			4	Inayet-oollah, son of Ulee Buksh.	Puthan Bumah.	To finding the sword sent to Court in the house of No. 1 prisoner.	(At foot enumerate the articles sent to Court to be produced at the trial)	10	Mohundur, Rajpoot.	To character.
							5	Kurm Ulee, son of Sheikh Ashruf.	Sheikh Bumah.				Himmut Singh, Rajpoot.	
													Prisoner No. 3, Purma, &c.	

(*a*) Column 3.—The number here is the consecutive number of persons committed in each case.

(*b*) Column 12.—Particular attention must be given to the preparation of the "abstract of inquiry and grounds of commitment." These must neither be too lengthy, entering too much into detail of the evidence of each witness, nor, on the other hand, must they be confined to too general grounds. The entry in this column will usually form some test of the care with which the case has been inquired into, and of the degree to which the Committing Officer made himself master of the leading features of each case.

(*c*) One continuous number of cases committed in each district for each year will be adopted.

(*d*) In case of males the sex need not be mentioned. It will be sufficient to give the father's name.
In case of females, the sex must be mentioned, but the father's name will be omitted.

(*e*) C. O. VI of 1866 directs that the age of the accused be always entered.

(*f*) The designation of offence will be that employed in the Schedule annexed to the Criminal Procedure.

(*g*) The witnesses for the prosecution and defence will be numbered continuously, not with a separate series of numbers for each.

For Lower Bengal and Central Provinces Rules, see App. "Calendar." (*e*). The Punjab Book Circular XIV of 1869 directs all Committing Officers that, as soon as notice shall have been given as to the place of trial of any European British subject committed by them for trial before the Chief Court, they shall send intimation to the Officer in charge of the Jail, to which the person charged is to be committed for intermediate custody, of the probable time of arrival of such person. Notice should at the same time be sent to the Deputy Commissioner of the District within which the place of trial may be situate.

* Ss. 439, &c.

† S. 4.

Copy of charge to be furnished to accused.

199. As soon as the charge* on which the accused person is to be tried† has been prepared, it shall be read and explained to him, and a copy or translation thereof shall be furnished to him, if he so require.

In case of Sheeb Pershad Pandah, S. W. R., XIV, 77, a Magistrate was held to have acted contrary to law when he determined whether the documents, of which copies were required by the prisoner, were necessary or not. A prisoner is entitled to have copies of all documents for which he asks, and which he thinks necessary for his defence, and it is for the authority *trying* the case to determine at the hearing whether the documents filed by a prisoner are admissible or not in evidence.

List of witnesses for defence on trial.

200. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he wishes to be summoned to give evidence on his trial‡ before the Court of Session or High Court.

‡ S. 4.

The Magistrate may, if he thinks proper, summon§ the persons so named to attend and give evidence‖ at the inquiry;‡ and if he does so, the commitment shall not be considered to have been made until such evidence has been taken.

§ S. 351.

‖ S. 4, n. (*d*).

Further list.

It shall be in the discretion of the Magistrate, subject to the provisions of section three hundred and fifty-nine, to allow the accused person to give in any further list of witnesses at a subsequent time.

See note to s. 193.

With regard to summons against a native lady of rank, see note, s. 359.

¶ S. 4.

Copies of depositions to be furnished to accused.

201. When the inquiry¶ is concluded, the accused person shall, if he demands them at a reasonable time before the trial,¶ be furnished with copies of the depositions. Such copies

shall be made at his expense, unless the Magistrate sees fit to give them free of cost. CHS. XV., XVI. SS. 201—203.

Such copies should be given on unstamped paper, and signed by the Court or some other Magistrate. The maximum rate chargeable to the accused person is one anna for each folio of ninety words. See Act XIII of 1865, s. 5, for cases committed before the High Court.

When commitment made, Magistrate to give notice to Government prosecutor.

202. When the accused person is committed to take his trial* before the Court of Session or High Court, the Magistrate shall issue an order to the public prosecutor, Government Pleader, or other person appointed by the Government to conduct prosecutions† before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge.‡

Nothing in this section shall preclude the Magistrate of the District§ in a case committted to the Court of Session, if he thinks fit, from appointing a person other than such Government Pleader or person to conduct the prosecution.†

* S. 4.
† Ss. 57, 190, n.
‡ Ss. 199, 439, &c.
§ S. 35.

CHAPTER XVI.—ss. 203—212.

OF THE TRIAL OF SUMMONS CASES BY MAGISTRATES.

Procedure in summons cases.

203. The following procedure shall be observed in the trial of summons‖ cases.

No formal charge¶ need at any time be made against the accused person, and neither the complaint** nor the summons†† shall be regarded otherwise than as notice to the accused person of the facts to be inquired‖ into. The Magistrate may convict the accused person of any offence (coming under this Chapter) which, from the facts proved, he appears to have committed, whatever may be the nature of the complaint**or summons.††

‖ S. 4.
¶ S. 439.
** S. 139, &c.
†† S. 147.

Object and effect of complaint.

CH. XVI. ss. 203—205

When notice is defective.

No defect in the complaint* or summons† shall affect the validity of the proceedings, unless it appears that the accused person was actually misled by such defect, and, in considering whether or not he was so misled, the Court shall have regard to the manner in which the accused person conducted his defence.‡

* S. 139, &c.
† S 147.
‡ S. 206, &c.

Persons are often needlessly summoned or even arrested for offences committed under this Chapter. A vigilant and detailed examination of the complaint would in most cases obviate this. The Government, N. W. P., impresses upon all Magistrates the expediency of limiting the issue of processes, ordinarily, in case of offences punishable with imprisonment not exceeding six months to offences not trivial. S. 207 contemplates that complainants, as well as accused persons, should produce their own witnesses. It is only when it appears that any person is likely to give *material* evidence on behalf of the complainant, or the person accused, and that such person will not *voluntarily* appear, that summons should issue. (Cir. Ord. 45A of 1869.)

For remarks on the use of the vernacular in all Criminal cases, see s. 190, note.

Accused person may be admitted to bail or allowed to be at large on his personal recognizance.

204. If, upon the day appointed (*a*), the accused person appears voluntarily in obedience to the summons§ in that behalf served upon him, or is brought before the Magistrate by virtue of a warrant‖ or otherwise, it shall be at the discretion of the Magistrate to admit him to bail,¶ or allow him to be at large upon his personal recognizance,** as the Magistrate directs.

If the accused person cannot give bail,¶ when required to do so, he shall be committed to custody.††

§ S. 147.
‖ S. 170.
¶ Ss. 160, 388.
** S. 391.
†† S. 194, n. (*d*).

(*a*). See s. 194, note (*c*).

Non-appearance of complainant.

205. If upon the day (*a*) appointed‡‡ for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint, unless for some reason he thinks proper to adjourn the hearing of the same to some other day. Such adjournment shall be made upon such terms as the Magistrate thinks fit.

‡‡ S. 204, n.

(*a*). Magistrates out in camp, and moving about rapidly, should not be too ready to strike off complaints under this section. A complaint once under trial, and dismissed in accordance with the terms of s. 205, should not be revived (Cal. High Court, 461, 1864), unless there be some irregularity in the proceedings, such as the holding of the Court in a place not that entered in the summons. (Lukhim Mollol, 5 W. R., 51.) The Magistrate of the district has no power to cancel an order of a Deputy Magistrate allowing a revival of a case. (Ramnarain Ghose, VIII W. R., C. R., 6)

Substance of complaint to be stated.

206. On the appearance of both parties on the day fixed for the trial,* the substance of the complaint† shall be stated to the accused person, and he shall be asked if he has any cause to show why he should not be convicted.

* S. 4.
† S. 140.

Conviction on admission of truth of complaint.

If the accused person admit the truth of the complaint,† his admission shall be recorded; and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly of such offence (coming under this Chapter) as he may appear to have committed.

It is not enough to read over the plaint as drawn up by the plaintiff's mukhtar, nor even the examination of the complainant as recorded by the mohurrir. It is as much the duty of Magistrates to explain a summons case in all its bearings to an accused, as though it were a case under Chapter XVII. Beginners especially need a warning word against a fancy that often prevails among them that cases under this Chapter, which form the bulk of their judicial criminal work, can be decided off hand. The more experienced a Magistrate gets in India, the readier he is to admit that it is often far more difficult for a European to get a safe and right clue to guide him through a common assault case than through a charge of robbery or murder. Among the difficulties to be faced are the following:—The reckless greed that natives when accused exhibit for setting up an *alibi*, even though they may have a real and good defence at their command; and the endless usages of that mystic feeling "adawut." On the part of complainants there is that unconquerable impulse, when they have really suffered wrong from one man, to include in their plaint any number of the injurer's relations, connexions, and friends who most probably never heard of the injury done before they were dragged into Court, or that readiness, almost instinct with which they exaggerate; and when only assaulted, surround the real facts of an assault with a plausible fiction of theft.

While on this subject it will not be amiss (though a little out of place under this section) to note the kindred and more difficult cases where self-inflicted injuries are given to add an air of reality to a false

and malicious complaint. Thus, in Dr. Norman Chevers' work on Medical Jurisprudence, we read as follows:—

The tulwar is frequently used for inflicting made-up wounds, but a practised eye will always at once detect such impositions, for these wounds are always inflicted in localities where a sword, drawn in anger, could not possibly reach. Thus, I recollect a case of a cut at right angles across the left calf high up, which the fellow said had been inflicted during pursuit. Now, had the sword reached, under the circumstances an oblique cut might have been inflicted, but the man said he was wounded while he was running, therefore the left heel must have been in the way, and would probably have received the cut. A made-up sword wound has always a little tail at one end, showing that it has been a deliberate draw, and this remark applies equally to wounds self-inflicted by the knife or razor, especially to the latter. A case in point had this tell-tale. The man declared that he had been wounded by a sword, and, true enough, there was a cut across the front of the thigh six inches long, but only penetrating, all along, into the sub-cutaneous fat. I at once declared that this was a made-up injury, for no hostile sword could have inflicted a wound of such magnitude without the muscles having been cut into in the centre of the wound. * * * * * * * *

And again, the most difficult cases are those in which the injuries shown in support of a false charge have been inflicted, not by the prisoner himself, but by his accomplices or instigators. * * *

In 1839 a young lad was sent to Dr. Mackinnon, by the Magistrate of Tirhoot. The index-finger of the right hand was severed at the joint between the first phalanx and the metacarpal bone, and the thumb also at the same articulation. Dr. Mackinnon then gave his opinion merely to the effect that a sharp cutting instrument must have been used to effect the amputation. The case before the Magistrate was that one zemindar accused another of having met his slave-boy in a wood, attacked him, and, with one blow of a sword, inflicted the injury above described. It was only in his examination before the Sessions Judge that Dr. Mackinnon was informed how the injury was stated to have been inflicted. He gave it as his opinion that the blow of a sword could not have neatly disarticulated the thumb and forefinger without injuring the rest of the hand (the reader will perceive this on looking at his own hand). The view of the matter led to a keen cross-questioning, when the slave-boy made a full confession that his master had cut off his fingers with a knife. The Magistrate's decision, which had sentenced the party first accused to fine and imprisonment, was quashed, and the original plaintiff was punished for subornation of perjury.

In 1862 Mr. Perceval stated that, when he was connected with the Police in Bombay, there were two or three gangs in that city who cut and wounded each other for purposes of false accusation and extortion. They used to cut one another's necks and arms by turns, as the lot fell, and accuse some rich passer-by of having done it. The wounded rascal would cry out "murder!" and his companions would follow and point out to the Police the abode of the alleged culprit and confirm the charge by declaring that they were present when the crime was committed. Several respectable men were disgraced and ruined by them. If those accused and arrested paid handsomely on the day of trial, the prosecutors would invent some plea to enable them to escape. It fell to the lot of a youthful member of one of these gangs to have his neck cut. The person appointed to cut him was a

drunken barber, who, instead of making a slight cut, inflicted a mortal wound. The gang fled, abandoning the youth, whose dying confession led to their arrest. A case of the description which enjoyed not a little notoriety occurred in 1872.

It is little wonder that, wearied with a tissue of falsehood, Magistrates throw cases over without patient investigation, but more justice is done by sifting the chaff from wheat, punishing the accused for the fault found to have been committed by him, and where possible either by s. 211, Penal Code, or 209 of this Code, showing the complainant that we are as ready to be just with him as we were to those whom he has unnecessarily or maliciously accused.

Procedure when no such admission is made.

207. If the accused person does not admit the truth of the complaint,* the Magistrate shall proceed to hear the complainant† and such witnesses as he produces in support of his complaint, and also to hear the accused person‡ and such witnesses as he produces in his defence.

* S. 110.
† S. 331.
‡ S. 242.

The procedure in a summons case would then be—

1*st.*—Informing accused of substance of complaint.

2*nd.*—If he admits its truth, *conviction:* if he does not:—

(*a.*) Examination of complainant.
(*b*) Examination of complainant's witnesses.
(*c.*) Examination of accused.
(*d.*) Examination of accused's witnesses.
(*e.*) Finding and sentence.

Adjournment.

208. Before or during the hearing of any complaint, the Magistrate may, in order to secure the attendance of witnesses or for any other reason, adjourn the hearing of the same to a day to be then appointed§ and stated in the presence and hearing of the party or parties.

§ S. 204, n. (*a*).

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does not appear, the Magistrate may issue his warrant‖ for the arrest of such person.

‖ S. 159.

If the complainant does not appear, the Magistrate may dismiss the complaint.

Compensation in cases of frivolous or vexatious complaints.

209. A Magistrate may dismiss (*a*) the complaint as frivolous or vexatious (*b*), and may, in his discretion, by his order of dismissal, award that the complainant shall pay (*c*) to

CH. XVI. s. 209.

the accused person such compensation, not exceeding fifty rupees, as to such Magistrate seems just and reasonable (*d*).

(*a*). Before proceeding under this section, he must however fully hear all that the complainant and his witnesses have to say for themselves. (Cal. High Ct. 19, dated the 21st July 1863.)

It is not necessary that any charge should be preferred before a person can be fined for making a frivolous or vexatious complaint. The Magistrate should simply call upon the complainant to show cause why he should not be fined. (Cal. High Ct. 672, 1863.)

An award of amends is no ground for the abandonment of a prosecution under s. 211, Penal Code, for making a false complaint with intent to injure. But if a Magistrate thinks that, by the fine imposed as amends, sufficient punishment has been awarded, he may, under s. 470, refuse leave to prosecute—Cal. High Ct. 111, 1865; see S. W. R., XV, 10, where a Magistrate awarded compensation, and afterwards sent up the complainant for perjury. (Roopun Rae.)

(*b*). The High Court refused to interfere with the order of a Magistrate awarding compensation, when it appeared, after due inquiry by the Magistrate, that the complainants laid claim to large jummas in a chur, without possessing any documents to prove their rights. (Mothoor Ghose, W. R., XI, 10.)

Held that, where a Magistrate is dealing with a charge which he has the power to dispose of finally under Chapter XVI, he has a discretion to award compensation even though the charge, as originally laid, may have fallen under Chapter XV. (Hindoo Singh Mowez, W. R. X, 49.)

Held that, where a complainant prefers three charges of three distinct offences, two of which are offences liable under this Chapter, and one under Chapter XVII, a Magistrate may award amends if he consider the charge with reference to the cases under this Chapter to have been vexatious. (Joyram Hazrah, S. W. R, XIII, 39.)

(*c*). An award under this section should always be made over to the accused who has been injured; it cannot be retained by the Court as a fine. (Gopal, N. W. P, 24th Nov. 1870.)

An award cannot be given under this section for an unfounded charge having been brought of a man being by repute a bad character. (Bulkishen, N. W. P., 9th Dec. 1870.)

(*d*). It has been ruled in many cases, especially by the High Court at Calcutta, that compensation, under s. 270, Act VIII, 1869, could not be awarded in cases under a special or local law. The provisions of the new Code however have swept away this apparently unmeaning distinction. S. 8 runs as follows:—

Offences under local and special laws.

"Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or Officer before which or before whom they are to be tried, may be inquired into and tried (trial by s. 4 includes the proceedings under Chapters XVI and XVII from the time when the accused appears in Court), according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act."

As this is a proceeding after the accused person appears in Court, the inference is that on this point there is no longer any distinction between the Penal Code and a local or special law.

In such cases, if more persons than one are accused in the complaint, the Magistrate may, in like manner, award compensation not exceeding fifty rupees to each of them.

Recovery of such compensation.

The sum so awarded shall be recoverable by (*e*) distress and sale of the moveable property belonging to the complainant, which may be found within the jurisdiction of the Magistrate* of the District; and such order shall authorize the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate* of the District, when the order has been endorsed by the Magistrate of the District in which such property is situated, and, if the sum awarded cannot be realized by means of such distress, by imprisonment of the complainant in the civil jail, for any time not exceeding thirty days, unless such sum is sooner paid (*f*).

* S. 35.

(*e*). The procedure under this section is very different from that for the levy of fine: in the latter case a person can be sent off to prison at once, and the distress warrant issue while he is in confinement. Under this section, however, there is no authority to detain the complainant until the Court can ascertain whether the compensation can be realized or not; it is not until the return of the distress warrant, without perfect realization, that the complainant can be detained at all.

Again, under this section, there is no provision for continuing any effort to realize the fine after the sentence of imprisonment has been pronounced. The Court may award, say Rs. 30, and Rs. 3 only be realized: it may then confine the complainant for thirty days or under; but once having so confined him, it cannot afterwards proceed to realize from other property which the Court may find afterwards that complainant possesses, for the words are "is sooner paid," not "is sooner realized." There is no provision for subtracting proportional fractions of imprisonment in default as a return for fractions of the amends being paid in.

The imprisonment again when completed discharges all further liability for the amends or portion of the amends unrealized.

(*f*). In Central Provinces entries of compensation under this section are only to be struck off as unrealizable by Deputy Commissioner's orders.

Withdrawal of complaint.

210. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw it.

A complaint withdrawn under this section shall not again be entertained.

It may be as well for us to point out here that to compound an offence, and to withdraw it, are two different things. Cases may be compounded which once instituted cannot be withdrawn.

No case in which the penalty prescribed for the offence complained of is over six months can be allowed to be withdrawn, but an offence that can be compounded may be compromised out of Court, and the prosecution abandoned.

* S. 4.

Acquittal.

211. If the Magistrate, in any case* tried under this chapter, finds the accused person not guilty, he shall record a judgment† of acquittal (*a*).

† S. 461.

(*a*). In Gora Chund Gopee, S. W. R., V, 45, and Tukeya Rai, XV, 23, the Calcutta High Court set aside an order of acquittal passed by a Deputy Magistrate in a case which he tried not on evidence taken before himself, but entirely on evidence in another case before another officer.

Sentence.

If the accused person is convicted (*b*), the Magistrate shall pass sentence upon him according to law.

(*b*). If convicted, the accused should invariably be made (where such is possible) to refund the fee paid by the complainant for examination (s. 140), and any fees paid for serving of processes. These may be recovered as if they were fines (s. 307).—Act VII of 1870, s. 31.

When the personal attendance of the accused person during the trial* has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of such accused person's agent,‡ if he has been permitted to appear by agent; or the accused person may be required to attend to hear such sentence.

‡ S. 151.

Effect of dismissal.

212. The dismissal of a complaint under this chapter shall operate in like manner as the acquittal§ of the accused person.

§ S. 460.

No complaint shall be dismissed under the provisions of this chapter, except in so far as it refers to a summons‖ case.

‖ S. 4.

CHAPTER XVII.—ss. 213—221.

OF THE TRIAL OF WARRANT CASES BY MAGISTRATES.

Procedure in warrant cases.

213. The following procedure shall be observed by Magistrates* in the trial of warrant† cases.

* S. 6, n.
† S. 4.

As a rule, the Crown should prosecute in all cases tried by a Magistrate under this chapter. In all cases in which the Police arrest without a warrant, the Crown prosecutes through the Police. Again, in cases on complaint triable under this chapter, when the complaint has once been received by the Magistrate, and steps have been taken towards inquiry into it, the complainant has no longer the option of drawing back, save where under s. 188 he is allowed to compound; nor is there any provision authorizing the Magistrate to dismiss the complaint on the complainant's failing to appear, or expressing a wish to withdraw the complaint. From the time, then, when the complaint has been received, the prosecution rests with the officers of Government, and the Crown should be entered as prosecutor. To this general rule, there are the exceptions noted in Chapter XXXV.

In any heinous case which it appears advisable to prosecute, it should not be left for the sufferer to exercise any option as to prosecution. The prosecution should be on the part of the Crown, and the sufferer should be called as a witness. If he refuse to attend, or to answer such questions as may be put to him, he may be arrested or punished as directed in ss. 352 and 364. It must not be inferred from this that, in regard to petty cases of theft, &c., the wish of the sufferer as to the matter being investigated or not, is not to be generally regarded.

A Magistrate was wrong in dismissing a case under this chapter on default of the complainant (s. 215). In serious cases the offence must be fully investigated; and if the presence of the party primarily injured is necessary, the case must be adjourned. (Mad. High Ct., 164; Bhagirutty Sootran, *et al.*, X. W. R., C. R., 33; Jodoo, 1 W. R., C. R., 5.)

And it is the duty of the Magistrate, in the absence of a public prosecutor, to see that this is done.

For strict injunctions to use the vernacular as much as possible in all these cases, see s. 190, note.

It is a strict order in the Central Provinces that the Magistrate must receive prisoners and cases up to regular hour for closing. If a case comes too late for hearing on the same day, it must be kept over till the next, and be considered pending before Magistrate. It cannot be returned to Police, C. O. 437, dated 31st May 1864. In non-cognizable cases District Superintendent not to interfere or issue warrant unless necessary or until order received from Magistrate. (3253, dated 2nd December 1864; so also in the N. W. P. by 578A of 1862.)

It is the duty of the Magistrate of the District, or the Magistrate having jurisdiction, on the delivery, by the District Superintendent of Police of a Charge-sheet, with prisoners, to acknowledge and accept the case at once, and to commit the prisoners to confinement (if the offence be not bailable, or if the bail be not furnished) in the hawâlat, not in the City Police-station; and, even if the case should be received on a close holiday, there should still be no difficulty in getting the requisite warrant prepared on the same day.

In order to protect the Police from the imputation of delay which might unjustly be attached to them, the District Superintendents have been instructed to note on the face of each Charge-sheet the hour and date of the arrival at the Sudder station, and the hour and date of the same being delivered to the Magistrate of the District, or to the Magistrate having jurisdiction; and also to keep up a vernacular Register in the form shown on the margin. It will be the duty of the Magistrate, as above, under the instruction of the Sudder Court, to whom a copy of this Circular will be sent, to keep up a corresponding Register, showing the duration of each case in his Court from "the hour and date of delivery," as shown in column 7 of the form prescribed for the observance of the District Superintendent of Police.

1	2	3	4	5	6	7	8
Name of Police Station.	No. of Charge-sheet.	Hour and Date of Complaint at Police Station.	Hour and Date of Arrest, if any.	Hour and Date of Despatch from Police Station.	Hour and Date of Arrival at Sudder Station.	Hour and Date of Delivery to Magistrate.	Total Days and Hours.

See also s. 194, note (*d*).

Sections 190 to 194 to apply.

214. The provisions of sections one hundred and ninety to one hundred and ninety-four (both inclusive) shall apply to trials* conducted under this chapter.

* S. 4.

S. 190 refers to examination of complainant and witnesses for prosecution.
„ 191 refers to examination of such persons in presence of accused.
„ 192 refers to power of Magistrate to summon and examine any person.
„ 193 refers to examination of accused.
„ 194 refers to adjournment of inquiry and remand.

Discharge of accused.

215. When the evidence† of the complainant‡ and of the witnesses‡ for the prosecution, and (*a*) such examination§ of the accused person as the Magistrate considers necessary(*b*), have been taken, the Magistrate, if he finds that no offence has been proved against the accused person, shall discharge him.

† S. 4, n. (*d*).
‡ S. 331.
§ S. 342.

(*a*). A mere plea by the accused that the property with the theft of which he is charged is his own property, unsupported by proof or circumstance which tend to indicate that there is some truth in the statement, is not sufficient to entitle him to be summarily discharged. In such case a Magistrate must try the case according to the allegations of the parties, and form his own opinion, unaided by any local inquiry by a Police Officer, unless such shall have been duly admitted as evidence. The Police may make a map of the locality, but this too before admission must be subjected to the rules regarding documentary evidence, if that should be necessary. If the Magistrate, after duly weighing the evidence for the prosecution, finds that the complainant has made out his statement that the accused has committed theft, he should call on the accused for his defence. (Paul, J., in Kali Charan Misser, B. L. R., VII, 56.)

(*b*). A complainant mentioned the name of several witnesses, and was told to produce them on a certain date. On that day he only produced two, who were examined, never having in the interim applied for summonses against the remainder. On the evidence of the two produced, the Magistrate was held to have done right in deciding. (Notober Bera, S. W. R., XV, 87)

Where a Magistrate, although witnesses were present, kept a case pending on, and the accused in attendance on bail, because he declared he could come to no conclusion without a local inquiry, he was held to have acted wrongly. (Niamutoolla *v.* Gopal Shaha, S. W. R., XIV, 64.)

EXPLANATION I.—The absence of the complainant, except where the offence may be lawfully compounded,* shall not be deemed sufficient ground for a discharge, if there appears other evidence† sufficient to substantiate the offence (*c*).

* S. 188.
† S. 4, n. (*d*).

(*c*). The first explanation sweeps away a large number of rulings; several of which will be found in case of Taki Mohammed Mandal, B. L. R., VII., p. 7.

See also s. 195, n. (*d*), as to communicating results of trials to the Police.

EXPLANATION II.—A discharge is not equivalent to an acquittal‡, and does not bar the revival of a prosecution for the same offence.

‡ Ss. 220, 460.

EXPLANATION III.—An order of discharge cannot be passed until the evidence† of the witnesses named for the prosecution has been taken.

Charge to be drawn when offence is apparently proved.

216. If the Magistrate finds that an offence is apparently proved against the accused person, which such Magistrate is competent to try§, and which, in his opinion, could be adequately punished by him, he shall prepare in writing a charge‖ against the accused person.

§ S. 4.
‖ S. 439.

CH. XVII. ss. 216—218.

EXPLANATION I.—The omission to prepare a charge shall not invalidate the trial,* if, in the opinion of the Court of Appeal† or Revision,‡ no failure of justice has been occasioned thereby.

* S. 4.
† S. 266, &c.
‡ S. 292, &c.

EXPLANATION II.—If the Court of Appeal† or Revision‡ thinks that a failure of justice has been occasioned by an omission to prepare a charge,§ it shall order the trial* to be recommenced from the point at which the charge§ should have been drawn up.

§ S. 439.

Plea.

217. The charge‖ shall then be read and explained to the accused person, and he shall be asked whether he is guilty or has any defence¶ to make.

‖ S. 439, &c.
¶ Ss. 342, &c., 186.

Defence.

218. If the accused person have any defence** to make to the charge,†† he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to recall and cross-examine‡‡ the witnesses for the prosecution.

** S. 342, &c.
†† S. 439.
‡‡ Pref. to Ch. V.

If the accused person puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

We feel constrained to say a word here for undefended prisoners, but here, as before, we will take the liberty to do so in the words of one much more authorized to speak *ex cathedrâ* than we are:—

The general theory of a criminal trial being that, in order to arrive at the truth, each party is to say all that he can for his own view of the case, it follows that it is as important to provide for the full statement of the case for the prisoner as for the full statement of the case for the Crown. The task is one which prisoners in general are quite incompetent to perform without some assistance.

The general theory of the law would, no doubt, require that such assistance should be given, and that liberally, but the subject is beset by practical difficulties. As a matter of fact, prisoners are generally guilty; and, if they are not, they are generally people of bad character. The public conviction that this is so, would, in practice, present great obstacles to any scheme for enabling them to defend themselves at the public expense. Natural as this feeling may be, it is not to be encouraged, and its existence is matter of regret. It is one instance of a miserable set of irrational compromises, which, under pretence of being practical expedients, produce almost all the practical hardships and defects with which the law can be justly reproached. Abuses are constantly defended, more or less consciously, on the ground that the hardships imposed on the innocent may, as it were, be set off against the chance of escape held out to the guilty. The answer to these arguments is that every step towards the discovery of

truth is a gain to the innocent, and a loss to the guilty, and that the only ground for preferring one system of criminal procedure to another is that it is better fitted to bring the truth to light. If (any) system does not attain that object, it ought to be made to do so, but it is a monstrous confusion to describe the practice of setting off conflicting absurdities against each other as a triumph of practical good sense.

Defences set up by or for prisoners at their trial are of three kinds. They are either real defences, false defences, or sham defences. A defence is real when the prisoner can give true and relevant evidence, or where the evidence against him is really inconclusive. A defence is false where the prisoner is prepared to give false but relevant evidence. A sham defence is based upon the defectiveness of the evidence as to facts, which are not really in dispute, and which the prisoner himself would not dispute if he were questioned in the first instance. Thus, a man is charged with robbery. He will often admit that the transaction took place as stated, but will give a different color to it. He will say, perhaps, that he saw the prosecutor going home drunk, and tried to assist him. When his Counsel looks into the evidence, he will often discover that there is a much better defence on the question of identity; that the prosecutor was drunk; had never seen the prisoner before, and had no particular means of observing him. If the prisoner's defence had been elicited before the Magistrates, and if (as he very likely would) the prisoner had called some discreditable person to swear that he and the prisoner saw the prosecutor drunk, and out of charity helped him into a public house, and gave the landlord his purse to take care of; this defence could not be set up. Or, suppose the converse case. The Counsel might see that it was quite consistent with all the evidence that the prisoner had been helping the prosecutor, and that the prosecutor had lost his purse before the prisoner came up, yet he might have on his brief an improbable *alibi*. If such a defence were set up before the Magistrates, the prisoner would have to stand or fall by it. It would be useless to ask the jury to find that he interfered for an innocent purpose after he had falsely denied having interfered at all. In the case of rape referred to above, the prisoner nearly escaped. If, before the Magistrates, he had called the witness who saw him near the spot at about the time in question, he would have had no chance at all.

Suppose next that the defence is fraudulent and perjured, as in the common instance of a false but relevant *alibi*. In such cases the witnesses for the prisoner are heard and seen for the first time by the prosecutor and his Counsel when they come into Court. The only opportunity of shaking their testimony is by cross-examination, and notwithstanding the common opinion as to the efficacy of this process, it is in reality a less powerful instrument for the exposure of direct wilful falsehood than it is usually supposed to be. It is no difficult matter to cross-examine a witness in such a way as to reduce exaggerations to their true proportion; to expose any bias by which the mind may be influenced, or to point out imperfection or confusion of memory; but if a man is prepared to swear point blank to a falsehood, to say falsely that a certain man was in a certain place at a certain time, or that certain things were or were not said on a certain occasion, it may be very difficult and even impossible to show by mere cross-questioning that he is lying.

The common way of attacking a false *alibi* is to have the witnesses examined separately, to ask them numerous questions as to matters of detail, and to try to detect some inconsistency in their answers. How

CH. XVII. s. 218.

was the man dressed? Where did he sit? What did you talk about? Who came in first? &c., &c. If the answers upon all or any of these points vary, it is always argued that the witnesses are not to be believed, because their evidence has failed to support the only available test of its honesty, but this argument is most unsatisfactory. The inaccuracy of men's memories is such that contradictions of this kind are perfectly consistent with honesty, though they may be indications of guilt; and whether an *alibi* is rejected or allowed to prevail, it often suggests uneasy doubt whether an innocent man is being condemned, or a criminal escaping from justice. If the prisoner were questioned before the Magistrates, and his witnesses were called, there would be time for independent inquiry into the truth of any defence which he might set up; and if he did not set it up till the last moment, the fact alone would weigh heavily with the jury against its credibility. Not long ago at the Derbyshire Quarter Sessions, a man was indicted for house-breaking. His defence before the Magistrates was an *alibi*. Several witnesses swore that they were keeping the wedding-day of one of them at his house on the night in question. On inquiry it turned out that the person whose wedding-day was supposed to have been kept had been married at a different time of the year. The witnesses, in the discretion of Counsel, were not called at the trial; but if they had then been called for the first time, the man would very likely have escaped. As it was, his original defence was repudiated, and an ingenious attempt was made to show that the evidence which was admitted to be true was consistent with his innocence.

Suppose, lastly, that the defence is a true one. It is obvious that in this case it will only be strengthened by inquiry, and that the prisoner would be entitled to have every possible facility for producing his witnesses at the trial. If, for instance, he can set up a genuine *alibi*, the opportunity of inquiry given to the prosecution, and the fact that they were not able to contradict it, would add to its weight.

In some countries, and especially in France, every accused person is provided with an advocate. If he does not choose one for himself, the Court nominate one for him ex-officio, and it is the duty of any member of the bar, however eminent, to undertake the defence of any prisoner, however obscure, if he is *nommiè d'office* for that purpose. When a prisoner is undefended in capital cases, this course is generally taken in England, and in such cases no fee is ever paid. Any barrister present in Court is obliged to accept a brief from the dock, with a fee of a guinea.

In India an undefended prisoner can hope for help nowhere but from his Judge. More than ever needful then is it for those, with whom an innocent accused's *only* hope rests, patiently to set before all undefended prisoners that they try the points in the case that stand damningly against them. Nor is this to be done hurriedly, or once for all. One by one each link should be carefully explained and full opportunity given for rebutting, what looks so dark against them: explanations may often then convert what looked darkest against a prisoner into strong proof of his innocence. We are far from advocating any maudlin sentimentality or mischievous tender-heartedness, but to hurry all prisoners indiscriminately into prison, however soothing it may be to the Police, and advantageous to the apparent peace of the district, brings two evils in its train; first no man feels secure; and, secondly, though budmashes are terrified, they soon learn to prey upon districts where Magistrates are more discriminating and true to the trust reposed in them.

Evidence for the defence.

219. The Magistrate shall, subject to the provisions of section three hundred and sixty-two, summon* (*a*) any witness and examine† any evidence‡ that may be offered in behalf of the accused person, to answer or disprove the evidence§ against him and may, for this purpose, at his discretion, adjourn the trial§ from time to time, as may be necessary.

* S. 351, &c.
† S. 331, &c.
‡ S. 4, n. (*e*).
§ S. 4.

(*a*). Where the accused had not his witnesses in attendance under s. 218, and did not formally ask that they should be summoned, it was held that a Magistrate, by his omission to call upon the accused for witnesses, did not prejudice the accused, nor did it amount to a defect in procedure. (Totaram, S. W. R., XI., 15. *Per contra*, see Doyal Gopee, X, 7.)

In Oudh it is a strict order that all accused persons at this state of the case shall be distinctly asked whether they wish to call any witnesses.

The N. W. Provinces High Court have decided that it is irregular to allow a witness for prosecution to be examined after the prisoner has made his defence, unless the witness is one to contradict any new case set up by the prisoner. (Chotay Lal, 25th August 1871.)

Acquittal.

220. If the Magistrate finds the accused person not guilty, he shall record‖ judgment of acquittal.

‖ S. 461, &c.

Conviction.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

EXPLANATION.—If a charge¶ is drawn up, the prisoner must either be acquitted or convicted. If no charge¶ is drawn up, there can be no judgment of acquittal or conviction, except in the case provided for in Explanation 1 to section two hundred and sixteen.

¶ S. 439.

The record in these cases should be prepared as directed in s. 198, note (*b*).

With regard to communicating the results of trials to the Police concerned, see s. 195 (b).

When a prisoner is acquitted of the offence charged, the Court ought not to order the property in respect of which the offence was charged to be given to the prosecutor. (Haree Bundhoo Santra, petitioner, W. R., V., 55.)

Magistrates to furnish the Customs Authorities with copies of final judgments in all cases of acquittal in prosecutions under Customs Laws. (Agra Cir. Ord. 15 of 1864. S. 217, Explanation 1.)

CH. XVII. s. 221.

* S. 4.

† Sched. IV.

How the Magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

221. In any trial* before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent† to try,* or one which, in the opinion of such Magistrate, ought to be tried* by the Court of Session or High Court, the Magistrate shall stop further proceedings under this chapter, and shall, when he either cannot (*a*) or ought not to make the accused person over to an officer empowered under section thirty-six (*b*), commit the prisoner under the provisions hereinbefore contained. If such Magistrate‡ is not empowered§ to commit he shall proceed under section forty-five (*c*).

‡ Ss. 21, 23, 25, 26, 148.

§ S. 143.

(*a*). *Cannot* would be in cases punishable with death.

Ought not would be when the Magistrate making the inquiry is himself a Magistrate of the first class. Nor ought he, when of the second or third class, to do so in serious cases of attempt to murder and robberies in which personal violence is attempted, or in the case of notorious and habitual offenders.

(*b*). S. 36 refers to Officers specially empowered in the Non-Regulation Provinces.

(*c*). S. 45 runs thus:—

Procedure of Magistrate in cases beyond his jurisdiction.

45. If, in the course of a proceeding before a Magistrate, the evidence appears to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try,

or for which he is not competent to commit the accused person for trial,

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction as the Magistrate of the District directs.

Note by the Select Committee on Chap. XVIII.

In Chapter XVIII, we have provided a procedure for the summary trial of all summons cases and certain other specified offences. We have made the power to hold summary trials inherent in the Magistrate of the District, but have empowered the Local Government to invest first class Magistrates or Benches of Magistrates with all or any of the powers mentioned in this chapter. The chief feature of the summary trial, as we propose it, is that, instead of usual record or the proceedings, there will be a mere register in non-appealable cases, and a curtailed record of the evidence in appealable cases. In summary trials held by Magistrates of the first class or Benches of Magistrates exercising first class powers, there will be no appeal from a sentence of three months' imprisonment, or fine not exceeding two hundred rupees.

CHAPTER XVIII.—ss. 222—230.

Of Summary Trials.

What offences may be tried summarily.

222. The Magistrate* of the District may try† the following offences in a summary way, and, on conviction of the offender, may pass such sentence as may be lawfully inflicted under section twenty (*a*) of this Code:—

* S. 35.
† S. 4.

(*a*). This section lays down the Magistrates have ordinary powers of passing sentence.

(1.) Offences referred to in section one hundred and forty-eight of this Code, *i.e.*, summary cases.

(2.) Offences relating to weights and measures under sections two hundred and sixty-four, two hundred and sixty-five, and two hundred and sixty-six of the Indian Penal Code.

(3.) Hurt under section three hundred and twenty-three of the Indian Penal Code.

(4.) Theft under section three hundred and seventy-nine of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(5.) Theft under section three hundred and eighty of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(6.) Theft under section three hundred and eighty-one of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(7.) Receiving stolen property under section four hundred and eleven of the Indian Penal Code.

(8.) Mischief under section four hundred and twenty-seven of the Indian Penal Code.

(9.) House-trespass under section four hundred and forty-eight of the Indian Penal Code.

(10.) Criminal intimidation under sections five hundred and four and five hundred and six of the Indian Penal Code.

(11.) Abetment of, or attempt to commit, when such attempt is an offence, any of the foregoing offences.

Power to invest Magistrates with power to try summarily.

223. The Local Government may invest any Magistrate* of the first class with power to try† summarily all or any of the offences mentioned in section two hundred and twenty-two.

* Ss. 19, 20.

† S. 4.

Power to invest Bench of Magistrates invested with first class magisterial power.

224. The Local Government may invest any Bench‡ of Magistrates invested with the powers of a Magistrate of the first class,§ with power to try‖ summarily all or any of the offences mentioned in section two hundred and twenty-two.

‡ S. 50, &c.

§ S. 20.

‖ S. 4.

Power to invest Bench of Magistrates invested with less power.

225. The Local Government may invest any Bench¶ of Magistrates invested with the powers of a Magistrate of the second** or third class with power to try†† summarily all or any of the following offences:—

¶ S. 50, &c.

** S. 20.

†† S. 4.

Offences coming within sections two hundred and seventy-seven, two hundred and seventy-eight, two hundred and seventy-nine, two hundred and eighty-five, two hundred and eighty-six, two hundred and eighty-nine, two hundred and ninety, two hundred and ninety-two, two hundred and ninety-three, two hundred and ninety-four, three hundred and twenty-three, three hundred and thirty-four, three hundred and thirty-six, three hundred and forty-one, three hundred and fifty-two, four hundred and twenty-six, and four hundred and forty-seven of the Indian Penal Code; any offences against Municipal Acts, and the Conservancy Clauses of Police Acts punishable with fine or with imprisonment not exceeding one month.

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277. Defiling the water of a public spring or reservoir.
278. Making atmosphere noxious to health.
279. Driving or riding on a public way so rashly or negligently as to endanger human life, &c.
285. Dealing with fire or any combustible matter, so as to endanger human life, &c.
286. So dealing with any explosive substance.
289. A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.
290. Committing a public nuisance.
292. Sale, &c., of obscene books, &c.
293. Having in possession obscene book, &c., for sale or exhibition.
294. Obscene songs.
323. Voluntarily causing hurt.
334. Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.
336. Doing any act which endangers human life or the personal safety of others.
341. Wrongfully restraining any person.
352. Assault or use of criminal force otherwise than on grave provocation.
426. Mischief.
447. Criminal trespass.

Procedure for summons and warrant cases applicable with certain exceptions.

226. In trials* under this chapter the provisions of this Code in regard to summons† cases shall be followed in respect of summons† cases, and the procedure for warrant* cases in respect of warrant‡ cases, with the exceptions hereinafter provided.

* S. 4. † Chap. XVI. ‡ Chap. XVII.

Record in cases where there is no appeal.

227. In cases where no appeal (*a*)§ lies, the Magistrate‖ or Bench¶ of Magistrates need not record the evidence** of the witnesses, nor the reasons for passing the judgment,†† nor draw up a formal‡‡ charge, but he or they shall enter in a register, to be kept for the purpose, the following particulars :—

§ S. 274. ‖ Ss. 222, 223. ¶ S. 50, &c. ** S. 4, n. (*d*), s. 331. †† S. 461. ‡‡ S. 439.

(*a*) The serial number;
(*b*) The date of the commission of the offence;
(*c*) The date of the report or complaint;§§.
(*d*) The name of the complainant;
(*e*) The name, parentage, and residence of the accused person;
(*f*) The offence complained of or proved;
(*g*) The prisoner's plea ;‖‖

§§ S. 189, &c. ‖‖ Ss. 206, 207, 217.

CH. XVIII. ss. 227, 228.

* S. 461.

(*h*) The finding, and, in the case of a conviction, a brief statement of the reasons therefor;*

(*i*) The sentence;* and

(*j*) The date on which the proceedings terminated.

(*a*). S. 274 is given below for the sake of easier reference:

Appeals from summary convictions.

274. There shall be no appeal in cases tried summarily, in which a Magistrate of the District, or a Magistrate or Bench of Magistrates invested with the powers of a Magistrate of the first class, empowered to act under section two hundred and twenty-two, two hundred and twenty-three, or two hundred and twenty-four, passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

An appeal may be brought against any sentence referred to in section two hundred and seventy-three or two hundred and seventy-four, by which any two or more of the punishments therein mentioned are combined, but not against a sentence in which imprisonment is awarded in default of payment of fine and in addition thereto.

Nor against any sentence which would not otherwise be liable to appeal because the person convicted is ordered to find security to keep the peace.

Saving of sentences on European British subjects.

The provisions of this and the last preceding section shall not apply to appeals from orders passed on European British subjects under section seventy-four or seventy-six.

Norman, J., in the case of Mookta Sing, S. W. R., XIII, 60, held that a person, having to exercise judicial functions, may give evidence in a case pending before him when such evidence can and must be submitted to the independent judgment of other persons exercising similar judicial functions sitting with him at the same time.

† Ss. 222, 223.
‡ S. 50, &c.

Record in appealable cases.

228. If a Magistrate† or Bench‡ of Magistrates, acting under section two hundred and twenty-two, two hundred and twenty-three or two hundred and twenty-four, passes a sentence of more than three months' imprisonment, or of fine exceeding two hundred rupees;

or if a Bench‡ of Magistrates, acting under section two hundred and twenty-five, convicts any person,

such Magistrate† or Bench‡ of Magistrates shall, before passing sentence, record§ a judgment embodying the substance of the evidence‖ on which the conviction was had, and also the particulars mentioned in section two hundred and twenty-seven.

§ S. 461.
‖ S. 4, n. (*d*).

Such judgment shall be the only record in cases coming within this section.

Language of judgment.

229. Records* made under section two hundred and twenty-seven and judgments recorded under section two hundred and twenty-eight shall be written by the presiding officer, either in English or in the language of the district in which the trial† was held, or, by direction of the Court to which such presiding officer is immediately subordinate,‡ in the language of the presiding officer.

* S. 461.

† S. 4.

‡ S. 40.

Bench of Magistrates may be empowered to employ Clerk.

230. The Local Government may authorize any Bench§ of Magistrates, empowered to try offences‖ summarily, to prepare the aforesaid record or judgment¶ by means of an officer of such Court, and the record or judgment so prepared shall be signed by each member of such Bench present conducting the proceedings.

§ S. 50, &c.

‖ S. 4.

¶ S. 461.

Notes by Select Committee on Chap. XIX.

In trials of European British subjects before a Sessions Court, the Judge will follow his ordinary procedure, and the trial will be either with assessors or by jury. Not less than half the assessors or jurors, as the case may be, are to be European British subjects. To obtain this number we have allowed the Judge to summon persons who could, in other trials, claim exemption.

In section 249, we have provided in the case of trials by a Session Judge that the depositions given before the Committing Magistrate may be referred to and used by the Court.

We have explicitly stated the privilege of Counsel for the prosecution and defence to address the Court in the conduct of their case, and we have given the Court power to examine the accused at any stage of the proceedings.

We have inserted sections in the chapter on trials before the Court of Session defining the relative duties of the Judge and the jury.

CHAPTER XIX.—ss. 231—265.

TRIAL BY COURT OF SESSION.

Cognizance of offences by Court of Session.

231. No Court of Session shall take cognizance of any offence, as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate** duly empowered in that behalf (*a*), except in the cases referred to in section four hundred and seventy-two (*b*) (*c*).

** Ss. 21, 23, 25, 26, 143.

(*a*). A Sessions Judge cannot dismiss a case committed on insufficient grounds, nor can he treat it as a nullity: he is not empowered to remand it, but must proceed with the trial. If the case has been committed by an officer not empowered to commit, and in his opinion the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry, and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate. (S. 33.)

Where a Court of Sessions consider a commitment has been illegally (otherwise than as provided for in s. 33) made, he should refer it to the High Court for orders, but he is not to do this simply because he thinks the evidence legally insufficient; it is only when he sees a manifest error has been committed. (Calcutta High Court, 7, dated 2nd June 1864; Gokul Bawari, W. R., I., 8.)

In the exercise of the powers conferred on him by Statute 28 Victotoria, Chapter XV, section 3, the Governor-General of India in Council orders that the High Court of Judicature for the North-Western Provinces shall be the Court for the trial of offences alleged to have been committed by European British subjects on the line of railway from Allahabad to Jubbulpore, or on the lands or in the buildings appurtenant thereto; and His Excellency in Council further orders that the said line of railway, lands, and buildings shall be deemed to be part of the district of Allahabad for the purpose of the trial by the Court of Sessions at Allahabad of offences cognizable by a Court of Sessions, and alleged to have been committed on the said line of railway, lands, or buildings. (Govt. Not., Jud. Cr. Dept., 20 of 1869.)

Sessions Judges need no longer specially communicate to the committing officer copies of their remarks in cases in which they may consider the commitment to have been made on insufficient grounds, but in forwarding the office copies of their statements to the Commissioner, will request him to draw the particular attention of the officer concerned to any cases in which want of judgment may appear to have been evinced. (Agra S. N. A. C. O. 708 of 1856.)

(*b*). S. 472, runs thus:—

A Court of Session may charge a person for any such offence committed before it or under its own cognizance, if the offence be triable by the Court of Session exclusively, and may commit or hold to bail and try such person upon its own charge.

The offences are—

(1) any offence under Chapter X, P. C. (See s. 467.)
(2) " " " ss. (193—196) 199, 200 (205—211), 228, P. C.
(3) " " " ss. 463, 471, 475, 476, P. C.

(*c*). By Agra High Court C. O. I of 1867, Sessions Judges are directed to fix a certain day in each month, except that of authorized vacation, for the holding of Sessions at their head-quarters. Trials should ordinarily commence on that day, and continue on the following days until concluded, and at no other time. Judges leaving for out-stations are invariably to report to the High Court the date they leave their head-quarters to hold gaol deliveries at out-stations. Similar rules prevail in the Central Provinces with certain modifications, and will be found in C. O. XVIII of 1863.

With regard to out-stations, the N. W. P. Government have been pleased to determine that the Sessions Judges of those districts to which out-stations are attached shall proceed thither for the purpose of holding periodical jail deliveries, after every second month; where

the out-stations may be comparatively near, and the means of travelling rapid, or elsewhere, after every quarter.

The duties of the Police have already been alluded to under s. 190 and the notes given there and under s. 50 should be consulted.

In the Punjab these further instructions are issued for Sessions cases:—

In Sessions cases either the Magistrate or (should the Magistrate desire it) the District Superintendent should draw up, for the guidance of the Government Pleader or other officer appointed to conduct the prosecution, a memorandum containing a concise history of the case, and of the specific facts to which each witness is able to speak.

This memorandum, together with the special report or special diaries, and copies of necessary evidence, should be made over to the Government vakeel at least three days before the day appointed for the trial, and should be returned at the close of the trial with such remarks as the prosecuting officer may wish to offer. The memorandum will be treated by the Pleader or other officer as a confidential communication. The Court Inspector or Police Officer acquainted with the case should be present to assist the Government vakeel throughout the case, if the Magistrate so desire. In appeals of importance the vakeel should be duly instructed, and should make himself acquainted with the contents of the file.

C. O., N. W P., 1047 of 1854, directs that all committing Magistrates will, in future, invariably submit an abstract of examination and grounds of commitment, together with each criminal case made over by them for trial to the Sessions Judge. They must not assign this duty to the Clerk charged with preparing the calendar by means of a translation of the purport of the Oordoo proceedings of commitment, but will themselves write down a summary of the grounds upon which a case is committed (for exhibition in the calendar), at the same time that they pass the order of commitment to the Sessions Court.

The same Court, in C. O. 10 of 1862, point out that Sessions Judges are no longer prohibited from trying cases committed by themselves to the Sessions, but are directed to report to the Court cases in which the trial of such cases by themselves may appear objectionable.

Trials to be by jury or with assessors.

232. All trials before the Court of Session shall be either by jury, or conducted with the aid of two or more assessors.

In N. W. P. all Sessions trials, except under ss. 234, 242, to be held with assessors.

In the trial of cases in which offences are charged, some of which should be tried by jury, and others with the aid of assessors, it has been the practice in Sessions Courts in Bengal that the Judge should take the verdict of the jury on the charges relating to offences which they are competent to try, and that he should then regard the jurors as assessors, and take their opinion on the other charges. In such a case both the statement of the Judge's direction to the jury and the grounds of his decision should form part of the record. The Calcutta High Court has never expressed any opinion on this procedure, which has, in several cases, come before it as a Court of Appeal. (Prinsep's Code of 1869.)

The Sessions Judges of districts in which trials by jury are held, and all Sessions Judges presiding over trials in which, under s. 234, special juries shall be empaneled, should, before commencing, record in English the names of all the jurymen in attendance; and after the

selection by lot, under s. 240, of those who are to constitute the jury in the case before the Court, they shall also mark the names of those selected. These papers should form part of the record of the case.

If, in accordance with s. 243, any objection be raised to any juror, the name of the objector, the nature of the objection, and the decision of the Court, shall also be recorded.

The verdict of the jury shall also be stated on the paper on which the foregoing details are set forth.

Local Government may order trials before Court of Session to be by jury.

233. The Local Government may order that the trial* of all offences, or of any particular class of offences, before any Court of Session, shall be by jury, in any District; and such Local Government may from time to time revoke or alter such order.

* S. 4.

Orders passed under this section shall be published in the official Gazette, and in such other manner as the Local Government from time to time directs.

EXPLANATION.—If an offence triable* with assessors is tried* by a jury, the trial* shall not on that ground merely be invalid. If an offence triable* by a jury is tried* with assessors, the trial* shall not on that ground merely be invalid, unless objection be taken before the Court records its finding.

The Government of Bengal have ordered [January 7th, 1862] that, in the districts of the 24-Pergunnahs, Hooghly, Burdwan, Moorshedabad, Nuddea, Patna, and Dacca, the trial by any Court of Session of any of the offences provided for by Chapters VIII (offences against the public tranquility), XI (false evidence and offences against public justice), XVI (offences affecting the human body), XVIII (offences against property), and (by O., May 27, 1862,) XVIII (offences relating to documents and to trade or property marks) of the Penal Code, shall be by jury only. On October 13, 1862, trials for abetments of, or attempts to commit, any of the above offences were added. In the province of Assam *all* trials in the Sessions Court are held by jury. (Government of Bengal, March 28th, 1862.)

After the Government order that the trial of all offences by the Court of Session in Assam shall be by jury, Gowalparah, then a district of Assam, was transferred to Cooch Behar, and made subordinate to the Sessions Court of that province. Held, trial by jury ceases in a district, when the district ceases to belong to a division to which trial by jury has been extended. (Khoodeeram, W. R., VIII, 39.)

The Commissioner of Cooch Behar has no power to hold trial by jury in the Gowalparah district. (Bhagidhone Katchari.)

All Sessions trials in the North-Western Provinces, the Punjab, Oudh, and the Central Provinces, except under s. 234, are held with the aid of assessors only. (S. N. A., Agra, C. O., 4, 1862.)

The orders relating to trial by jury in Bengal have, in no case, been extended to offences falling under special or local laws.

Jury for trial of Europeans or Americans.

234. Criminal* trials before the Court of Session in which a European (not being a European† British subject) or an American, is the accused person, or one of the accused persons, shall be by jury.

* S. 4.

† S. 71.

In such case the jury, if such European or American desire it, shall consist of at least one-half of Europeans, whether European† British subjects or not, or Americans, if such a jury can be procured:

Provided that, in any district in which the Local Government has not ordered that all trials* before the Court of Session, or trials* for all offences of the class within which the trial* about to take place falls, shall be by jury, such European or American may elect to be tried* without jury.

Election to be tried without jury.

Before the commencement of the proceedings, the Judge should record in English the names of all the jurymen in attendance, and of these the names of those selected by lot under s. 240.

And after the selection by lot, under s. 240, from among the persons who are to constitute the jury in the particular case before the Court, he should mark the names of those selected. These papers should form part of the record of the case. If, in accordance with s. 243, any objection be raised to any juror, the name of the objector, the nature of the objection, and the decision of the Court should also be recorded. The verdict to the jury should be stated on the paper on which the above details have been set forth.

Trial before Court of Session to be conducted by Public Prosecutor, Government Pleader.

235. In every trial‡ before a Court of Session, the prosecution shall be conducted by the Public Prosecutor, Government Pleader, or by some other officer specially empowered by the Magistrate§ of the District in that behalf.

‡ S. 4.

§ S. 35.

See notes to ss. 57, 190, and 231, n. (*b*).

Number of jury.

236. In trials‖ by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three nor more than nine, as the Local

‖ S. 4.

Government, by any general order applicable to any particular District, or to any particular classes of offences in that District, directs.

Seven has been fixed by the Government of Bengal as the number of all juries under the Code of Criminal Procedure. (Government Order, 3173, December 28th, 1861.)

* S. 4.

Commencement of trial.

237. When the Court is ready to commence the trial,* the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged or claims to be tried.*

Plea of guilty.

If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon.

An accused should make the plea by his own mouth, and not through his counsel or pleader. (S. W. R., XV, 42, Roopa Gowalla.)

Where a man had made a full confession to murder before the Deputy Magistrate, but on being asked to plead at the Sessions said, "I did not mean to kill him, why should I kill my brother? Nor did I strike him so much that he should die." This clearly amounted to a plea of not guilty, and the accused should have been tried. It was illegal for the Sessions Judge after this plea to convict alone on the confession made before the Deputy Magistrate. (Hursookh, N. W. P., 19th December, 1870.)

In a case of causing grievous hurt to B, the prisoner, on having the charge read to him, made a statement in which he stated that he had a quarrel with B, and struck him twice with a stick in anger. *Held*, that the Sessions Judge was wrong in treating this statement as a plea of guilty and in convicting thereon, and the conviction was quashed, and the case remanded for trial. (Joypal Koiree, W. R., XI, 6.)

When a prisoner pleads guilty, but goes on to say that he did not commit the offence with which he is charged, the plea is really one of not guilty. (Mittun Chowdhry, W. R., XI, 53.)

Held, in Swaree Dome, S. W. R., VI, 83, that, where the prisoners were committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, the prisoners must be tried separately on each of three, and a trial upon all three charges at once is illegal.

Where a man has once pleaded to a charge, the prosecution cannot (except under s 459) withdraw it. The accused is entitled to a trial upon it, and if the evidence against him be not clear enough to secure a conviction, to a clear verdict of acquittal. (S. W. R., V, C. L., 4.)

A, charged separately for having given false evidence with regard to two statements directly opposed to each other, pleads guilty to one of them, his plea does not involve an acquittal on the other charge. *A prisoner cannot elect on which charge he will be punished.* (Hossain Ali, B. L. R., VIII, p. 25.)

After a prisoner has pleaded guilty, a Sessions Judge may, if he likes, proceed to record the evidence, but no jury or assessor need sit with him. (Cal. High Ct., 810, 1863.)

Refusal to plead or claim to be tried.

238. If the accused person refuses to, or does not, plead, or if he claims to be tried,* the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try* the case. * S. 4.

Assessors how chosen.

239. When the trial† is to be with assessors, the assessors shall be chosen, as the Judge thinks fit, from the persons‡ summoned to act as assessors. † S. 4. ‡ S. 407.

The names of those selected should form part of the record. See note, s. 232.

Jurors to be chosen by lot.

240. When the trial§ is to be by jury, the jury shall be chosen by lot from the persons‖ summoned to act as jurors. § S. 4. ‖ S. 407.

See note to s. 239.

Jury for trial of persons not Europeans or Americans.

241. In a trial¶ by jury before the Court of Session of a person not being a European or an American, at least one-half of the jury shall, if the accused person desire it, consist of persons who are neither Europeans nor Americans. ¶ S. 4.

See s. 239, note.

Jury when European or American charged jointly with one of another race.

242. In any case before the Court of Session, in which a European or American is charged jointly with a person of any other race, such other person shall, if he desire it, be tried** separately, if the European or American claims to be tried** by a jury consisting of at least one-half of Europeans and Americans. ** S. 4.

Names of jurors to be called.

243. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried†† by such juror. †† S. 4.

See note to s. 234.

CH. XIX. ss. 243, 244.

Objections to jurors.

Objection may then be made to such juror by the accused person or by the Public Prosecutor,* Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated.

* S. 57.

Any objection made to a juror shall be decided by the Court, and the decision of the Court shall be final.

If an objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons,† or, if there be no such juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided no objection to such juror or other person be made and allowed.

† S. 407.

If an objection be raised, the name of the objector, the nature of the objection, and the decision of the Court should form a part of the record. (Cal. High Ct. C. O. 4, 1865.)

Grounds of objection.

244. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(1) any ground of disqualification within section four hundred and five (*a*);

(*a*). *Viz.*:—

Persons who hold any office in or under the Court of Sessions.

Persons executing any duties of Police, or entrusted with any Police functions.

Persons who have been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Sessions Judge and Collector, renders them unfit to serve on the jury.

Persons afflicted with any infirmity of body or mind, sufficient to incapacitate them from serving.

Persons who, by habit or religious vows, have relinquished all care of worldly affairs.

(2) standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint‡ the prosecution was instituted, or to the person accused;

‡ Ss. 140, 190.

(3) being in the employment of any of such persons;

(4) being plaintiff or defendant against any of such persons in any civil suit;

(5) having complained against, or having been accused by, any of such persons in any criminal prosecution;

(6) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favor to, any of such persons, or which renders such person improper as a juror (*b*).

(*b*). Held in John Loudley, III W. R., 14, it is possible that an objection by a sailor that the jury was entirely composed of landsmen, and therefore could not understand him, would be a good one.

Juror to understand the language in which evidence is given or interpreted.

245. The Judge shall not allow any person to serve on the jury, unless such person understands the language in which the evidence* is given or interpreted.

* S. 4, n. (*d*).

Foreman of jury.

246. When the jury has been completed, they shall appoint one of their number to be foreman.

It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict† of the jury, and to ask any information from the Court that may be required by the jury.

† S. 263.

If a majority of the jury do not agree in the appointment of a foreman, he shall be named by the Court.

Examination of witnesses.

247. The witnesses shall then be examined, cross-examined,‡ and re-examined according to the law for the time being relating to the examination§ of witnesses.

‡ Chap. V, Pref.

§ S. 331, &c.

The N. W. P. Court are pleased to direct all Sessions Judges to place a distinctive mark opposite the name of every witness entered in the Magistrate's English calendar of commitment, who may be examined at the trial in the Court of Session.

A memorandum of the names of all witnesses not named in the Magistrate's calendar, whom the Judge has thought proper to examine at the trial, should also be recorded therein.

CH. XIX. ss. 247, 248.

In the event of a Sessions Judge omitting to examine any of the witnesses for the prosecution, either from their sickness, absence, or other cause, he should record in his proceedings the reason why he considered the examination unnecessary. (C. O. 5 of 1863.)

Where a witness called by one of the parties is a competent witness, the opposite party has a right to cross-examine him, though the party calling him has declined to ask him a single question. (S. W. R., XV, 34, Ishan Dutt.)

By Notification, Govt., Bengal, August 6, 1865, *Calcutta Gazette*, p. 1422, English was introduced as the language for the record of evidence in the Courts of Session. Where a foreign language is used, or a dialect not understood by the Judge, he may make use of the services of an interpreter as provided by s. 431. Where doubtful or important phrases are used, it would be well to record them in the vernacular in Roman characters. The examination of the accused should, however, still be recorded in his vernacular. (Cal. H. Ct. C. O. 9, 1865.)

There are a whole mass of rulings to show that witnesses must be examined in strict accordance with the provisions laid down in s. 331. Witnesses are not to be examined more briefly than they should have been or would be if called for the first time; but if from the record of the committing Magistrate it appears that any witness' evidence is irrelevant or mere hearsay, the Sessions Judge is not bound to record his evidence. (W. R., III, C. L., 11.)

Hearsay evidence must be carefully stopped as far as possible, so as not to let it influence the minds of the jury. (Kali Churun Gangooly VII, W. R., 2; Petumber Sirdar, 25.)

Similarly, what had been done on other occasions by the father or nephews or brothers of a prisoner is not, and cannot by any possibility be, evidence, either for or against the accused with reference to the particular offence with which he is charged. (Phoolchand, VIII, *Ibid*, 12.)

* S. 193.

Examination of accused before Magistrate to be evidence.

† S. 4.

248. The examination* of the accused person before the committing Magistrate shall be given in evidence at the trial.†

Before receiving it as evidence, care should be taken to see that it is properly attested; of this the signature (not seal, stamp, or initial) of the committing Magistrate is *primâ facie* proof, nor can it be held to be incorrect or otherwise irregular until disproved by the accused. (Agra S. N. A., 99, 1862; Gokla, 107, W. R., VII, C. L., 4.) A Magistrate should not be called to swear to his own signature, except in cases of great doubt. (Reza Hussein, S. W. R., VIII, 55.)

Before criminating a man upon his own statement—

(1) it must be the whole of his statement accurately recorded in full, including every question put to him and every answer given by him;
(2) it must have been shown or read to him;
(3) he must have had liberty to explain or add to his answers;
(4) it must have been taken in the presence and hearing of a Magistrate;
(5) it must be signed by the accused or attested by his mark;
(6) it must be duly attested by the Magistrate before whom it was made.

If the examination be taken in the course of a preliminary inquiry, and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded: Provided that, if the error does not prejudice the prisoner, it shall not be deemed to affect the admissibility of the statement so recorded. (S. 346.)

No statement made by the accused to the committing officer can be used as evidence against the prisoner unless thus recorded. If needed, the committing officer must be called and examined on oath touching any such statements. (Hury Prasad, VI W. R., 85.)

If duly correct, such statement, after being used under this section, should be duly filed with the record of trial, but not if defective, unless the prosecution take exception to the order rejecting it, in which case if the proceedings be transmitted to the High Court, it may be transmitted separately with a memorandum of the Judge's order of rejection. (Cal. H. Ct. C O. 11, 1867.)

It is, therefore, unnecessary and irregular to take parol evidence of the matter contained in the deposition, though it may be admissible to give parol evidence of statements not contained in the statement; and it may also (though on this point the Calcutta Court express no final opinion) be allowable to show on the part of the accused that he added afterwards statements explanatory of the evidence which he had given. (VIII W. R., C. L., 16, 12.) In other words, there is a rebuttable or disputable presumption of law in favor of the genuineness of the attested examination which may be rebutted or disputed by the evidence for the defence; and, in default of such evidence, a Judge in his summing-up to the jury should direct them to conclusively presume that the written examination of the accused taken and attested as required by law (s. 346) is a correct record of his statement before the Magistrate. (VIII, W. R., C. L., 22.)

Where there are no grounds for questioning the statement received under this section, the accused may, even in a case of murder, be convicted on it alone without other corroborative evidence. (Runjeet Sontal, S. W. R., VI, 73; Hyder Julaha, 83; Jhurre, VII, 41; Kalychurn Potial, 59; Kendra Kumar, 61; Bysagoo, VIII, 29; and Gowree Sing, 28.)

An admission by A and B that the crime charged against them was committed by C and D, and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. (Kisto Mundul, VII W. R., C. R., 8.) Nor, again, where A and B said they had accompanied dacoits for a short distance, but turned back almost immediately, knew nothing of the dacoity or even that such was in contemplation. (Gireedharee Manjee, VII, 39.)

Evidence given at the preliminary inquiry admissible.

249. When a witness is produced before the Court of Session, or High Court, the evidence* given by him before the committing Magistrate may be referred to by the Court, if it was duly taken in the presence of the accused person, and the Court may, if it think fit, ground its judgment† thereon, although the witnesses may at the trial‡ make statements inconsistent therewith (*a*).

* S. 4, n. (*d*).

† S. 461.

‡ S. 4.

CH. XIX. ss. 249—251.

(*a*.) A Judge during the trial ought to place on his desk before him the depositions taken at the preliminary investigation, and by comparing them, paragraph by paragraph, with the evidence given by the same witnesses before himself, be in a position to put questions on cross-examination, the answers to which might clear up discrepancies, or elicit facts favorable to the accused. (Bindabun Bowree, W. R., V, 54.)

This section does not in the least relieve the Magistrate from filing with his record all the evidence admitted during the inquiry, such as the charge-sheet under s. 198 and under s. 446, where one is framed under that section; the examination of the accused (s. 193), of a medical witness (s. 323), or of the Chemical Examiner (s. 325), or of that taken under s. 327 in the absence of the accused or of a previous conviction under s. 326. So also with all exhibits used by either prosecutor or accused. These should all be initialled, and, when numerous, properly numbered.

EXPLANATION.—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent, except in the cases in which such evidence may be referred to under the Indian Evidence Act* or other law† in force for the time being upon the subject of evidence.

* Act 1 of '72.
† Ss. 323, 325, 327, 330.

Examination of accused.

250. The Court may, from time to time, at any stage of the trial,‡ examine the accused person, and shall question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

‡ S. 4.

The Agra High Court (C. O. 6 of 1863) desire that all questions put and answers given be recorded by the Judge. See especially notes to s. 218.

Defence.

251. When the examination§ of the witnesses for the prosecution and the examination‖ of the accused person is concluded, the accused person shall be asked (*a*) whether he means to call witnesses. If he says that he does not, the prosecutor¶ may sum** up his case. The Court may then, if it thinks that there are no grounds for proceeding,

§ S. 331.
‖ S. 342.
¶ S. 57.
** Chap. V, Pref.

in a case tried with assessors, record a finding,†† or, in a case tried by a jury, instruct the jury to return a verdict of acquittal (*b*).

†† S. 461.

(*a*). By Agra S. N. A., 7 of 1863, Sessions Judges are to place on the record a note whether the accused was afforded the option of

addressing the Court, and whether he availed himself of it. So also, Gopal Hajjam, S. W. R., XV, 16, where the Calcutta Court pointed out further that, if the accused does not voluntarily make any statement, and declines to answer any question put by the Court under s. 250, the fact should be noted; and when there is nothing else to show the nature of the defence, a note of the address to the Court (if any) should be recorded. The record is not complete unless it shows the nature of the defence set up.

(*b*) The Sessions Judge has no power to discharge an accused otherwise than on full acquittal. (S. W. R., IX, C. L., 7.)

If the Court consider that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence (*c*), and produce his witnesses.

(*c*). There is nothing in the law to prohibit a written defence. If such be tendered, it should be received. (Agra S. N. A., Mudud Ali Khan, 356, 1862.)

The accused person or his counsel* or authorized agent may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

*S. 186, & Chap. V, Pref.

Prosecutor's right of reply.

252. If any evidence† is adduced on behalf of the accused person, the officer‡ conducting the prosecution shall be entitled to reply.

† S. 4, n. (*d*).

‡ S. 57.

View by jury or assessors.

253. Whenever, in the opinion of the Court, it is proper and convenient that the jury or assessors should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial§ took place, an order shall be made to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

§ S. 4.

Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury or assessors; and they shall, when the view is finished, be immediately conducted back into Court.

A Sessions Judge has been known to permit assessors in a trial to visit the scene of the alleged offence, without adopting the precautions provided by s. 253, and to order certain of the witnesses to attend with the assessors, and at the same time to press upon the latter the necessity of orally examining the witnesses, if they deemed it expedient to do so, in the presence of the accused, who would be present!! (Chutterdharee Singh, 5 W. R., 59)

* S. 4.

Procedure when juror becomes unable to attend.

254. If, in the course of a trial* by jury at any time prior to the finding, any juror, from any sufficient cause, is prevented from attending through the trial,*

or if any juror absents himself, and it is not possible to enforce his attendance,†

† S. 414.

a new juror shall be added, or the jury shall be discharged, and a new jury empannelled,

and in either case the trial* shall commence anew.

Assessors' opinion and charge to jury.

255. When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed—

‡ S. 4.

in cases tried‡ with assessors, to ask the assessors their opinion, and shall record it (*a*):

§ S. 4, n. (*e*).

in cases tried‡ by jury, to charge the jury (*b*), summing up the evidence§ for the prosecution and defence, and laying down the law by which the jury are to be guided.

A statement of the Judge's direction to the jury shall form part of the record.

(*a*). [Cir. 4, 1865] to all Sessions Judges in Lower Bengal:—

"The record of the opinion of such assessor should appear at the commencement of the judgment of the Sessions Judge. It is not sufficient that this record should contain a mere verdict of guilty or not guilty, or proven or not proven: what the High Court requires is not only the result arrived at by each assessor sitting on a Sessions trial, but if possible the reasons by which each assessor arrived at that result, that is, the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinions." (See also Bushmoo Aurut, 3 W. R., 21.) The North-Western Provinces' assessors are required to sign the opinions given by them.

In Oudh Bk. Cir. IV of 1869, the Chief Commissioner requests that whenever assessors differ in opinion from the Judge, the grounds of their opinion should be recorded.

There is nothing in the Code which forbids the Judge summing up the evidence to the assessors.

Where one of the two assessors says that he thinks it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner is guilty of all the acts charged, and the other assessor concurs with him, it cannot be said that the assessors have given no reason for their opinion. (Amiruddeen, B. L. R., VII., p. 63.)

In a case with assessors, the Judge can, if he think fit, before delivery of judgment, re-summon the assessors, and call for further evidence. (S. W. R., VIII, C.L., 15.)

(*b*). *The following Rulings have been issued on charge to Jury:—*

In charging a jury in a case of culpable homicide not amounting to murder, a Judge should call upon the jury to state which description of culpable homicide they consider the accused to have committed; section 304 of the Penal Code prescribing different punishments for that offence. Where the Judge omitted to require the jury to do this, the High Court held that the conviction was for the lighter description of the offence. (Ameer Khan, W. R., XII, 35)

In receiving the charge of a Judge to a jury in the Mofussil, it is sufficient to see whether the tendency of the charge, taken as a whole, has given a correct or incorrect direction to the mind of the jury, and it is not correct to apply to such charge the criticisms which would be applied to a charge of a Judge in a Court in England. (Gógaleo and others, W. R., XII., 80.)

A Judge in charging a jury should avoid expressing any decided opinion. All that a charge should contain is a statement of the evidence *pro.* and *con.*, with a running commentary as to its agreement or disagreement with the other facts of the case. (Gunga Bishen and others, W. R., I, 29.)

A Judge may give the jury his opinion of the guilt or innocence of the prisoner, if he shows them clearly that the decision rests with them. (Abdool Juleel, W. R., 1864, Cr., 5.)

He must confine himself to a general commentary on the evidence and a statement of the legal offence proved, should such evidence be credited. He must not give a positive opinion as to the guilt or innocence of the accused person. (Bharut Chunder Christian, appellant, W. R., I, Cr., 2; Queen *v.* Gunga Bishen, W. R., I, Cr., 26.)

In summing up, although a Judge has to leave facts to a jury, yet it is his duty to aid by arranging them in due form, analysing and explaining the whole; and in the case of evidence for the prosecution, he should show how what has been said bears against each particular prisoner. Where such evidence is weak against the accused, and points to the possibility of other persons being the guilty parties, the attention of the jury should be called to it, though an omission to do so does not necessarily amount to a misdirection. (Ram Gopal Dhur, S. W. R., X, 7; Bolakee, VI, 72; Kodai Kahar, V, 6; Choonee, 13.)

In giving a warning to a jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor and immaterial points the witnesses made different statements, a Judge exercises a wise discretion, and affords no ground for the objection of misdirection to the Jury. (Bustee Khan, W. R., I, 17.)

In a case of dacoity, the Judge should direct the jury to convict only if they find that all the prisoners had the intention of causing wrongful loss to the prosecutor. (Bonomally Ghose, W. R., 1864, Cr., 8.)

When different trials are held at different times and against different prisoners in respect of the same crime, a new charge specifying the particulars required by Circular Order No. 5, dated February 6th, 1863, should be delivered in each case. (Mahadeo, W. R., 1865, Cr., 15.)

CH. XIX. s. 255.

It is irregular in summing up to draw the attention of the jury to the absence of witnesses who were to have given evidence for the prosecution: the proper course would have been to have postponed the trial, and summoned them if their evidence was essential to the case. (Calcutta High Court, Sundea Buda.)

A Judge should sum up the evidence on both sides before requiring the jury to deliver their verdict. (Sitwa, S. W. R., XIV, 66.) He should always place on record whether he agrees with the verdict or not. (Chand Bagda, S. W. R., VII, 6.) The summing up should be based on the evidence recorded before the Session Judge himself, not on that in the Magistrate's calendar of commitment. (Nawab Khan, VII., 24.)

In Queen *v.* Gunesh Koormee, where the prisoner retracted his statement when read over to him, and said that he was compelled by force to make it, the Judge, without making any inquiry or taking any evidence on the point, submitted the statement to the jury as a confession, and further told them that they may fairly infer from the prisoner's intentions that his confession was a true one, he was held to have misdirected them. (S. W. R., IV.)

Held by Calcutta High Court, S. W. R., XIV, 46 (Dassee Mossulmance), that a Judge ought not to introduce into his direction any question as to recommending a prisoner to mercy, but should leave that entirely to the jury. A Judge was held to have done wrong in telling the jury that drunkenness, in the eye of the law, makes an offence the more heinous. All he should have said was that drunkenness is no excuse, and an act which, if committed by a sober man is an offence, is equally an offence if committed by one when drunk if the intoxication was voluntarily caused. (Zulfukar Khan, B. L. R., VIII, p. 22.)

Evidence as to character when against the accused should not go before the jury. It should be only taken and considered by the Sessions Judge, and should influence him in awarding punishment. (Mohima Chunder Doss, S. W. R., XV, 37.)

A Judge should not, in summing up, mention what witnesses for the defence state they have heard, nor should he allude to what a prisoner's relations may or may not have said unless such persons have been before the Court as witnesses and their evidence taken as the law directs. (Sheikh Majon. S. W. R., V, 1; Phul Chand, VIII, 12.)

In charges of false evidence on conflicting statements, a Judge should not simply put before the jury extracts of such statements, but give them in their entirety. Similarly, where a Police diary is put in evidence against a Police officer, it is not fair to read out only a part when such officer wishes the whole laid before the jury. (Kalee Churn Gangooly, S. W. R., VI, 93; Nabho Kishto Bhose, VIII, 90.)

Where the evidence of an accomplice is uncorroborated, the correct practice requires Sessions Judge not merely to tell the jury that it is unusual to convict on such evidence, but he should also tell them that it is unsafe and contrary both to prudence and practice to do so. (Ganubin Dharoji, Bom. H. Ct., Cr. Cases VI, 57.)

In a case in which the principal evidence against an accused is the evidence of an approver, a Sessions Judge should carefully warn the jury of the infirmity which attaches to that evidence, and he should also tell them (if the fact be so) that the approver is speaking under the influence of an offer of conditional pardon. (Bykant Nath Banerjee, X, 17.)

He should go through the history of the crime as detailed by the accomplice, and point out any independent evidence proving facts, showing that the prisoners were or must have been present at or cog-

nizant of the offence committed. If such facts are proved, they would corroborate the story of the accomplice. If the state of the facts proved is equally consistent with and capable of receiving a reasonable and natural explanation on the hypothesis of the prisoner's innocence, those facts, standing alone, would be no evidence of the truth of the accomplice's story. (Karoo, VI, 46.)

A Judge should further point out that where an accomplice speaks as to two or more persons having been concerned in the same offence, his testimony should be confirmed not only as to facts but also as to identity (Elaihee Bux, V, 84); and also that where the evidence for the prosecution rests on the uncorroborated testimony of an approver, who had once had his pardon revoked on account of the unsatisfactory statements made by him, a Judge should advise a jury not to convict; so also may he advise not to convict on the testimony of an accomplice alone without some corroboration. In such cases the Judges do not withdraw the case from the jury by positive directions to acquit, they only advise the jury not to give credit to the testimony. (Godai Raout, W. R., V, 12; Elaihee Buksh, 83; Nawab Jhan, VIII, 23; Nunko, IX, 28.) Omissions so to advise the jury are errors in law which amount to misdirections.

A failure of justice is caused by improper advice upon a question of fact, or by an omission to give that advice which a Judge, in the exercise of a sound judicial discretion, ought to give upon questions of fact, or as to the degree of credit to be given to particular witnesses.

A Judge should not only state to the jury all the evidence that has been given, but comment on its bearing and weight, and state the legal rules upon the subject and their application to the particular case, and even advise them as to the verdict they should give, so that it may accord with his view of the law and with justice. Indeed, without this assistance from the Judge, few juries would, in a contested case, be able to come to an unanimous opinion, being frequently left in a state of great perplexity by the influence of the speeches of the contending leaders. The accuracy of the summing up of the Judge is, therefore, of the very utmost importance; because, if the jury, after hearing the evidence and the powerful arguments which probably have been urged in favor of quite opposite views of the question, were entirely left to decide for themselves, without an impartial direction as to what just and legal weight ought to be attached to this or to that view of the case, it would be difficult, if not impracticable, for them to come to a just conclusion; and hence in the administration of criminal justice it is incumbent on the Judge correctly to state the law upon the case, as well as the evidence and the bearings of the latter. (Elahie Buksh, W. R., V, C. R., 87.)

Held by Peacock, C.J., in Full Bench Ruling, Elahie Buksh, V, 88:—

"If a Judge in a criminal trial in the Mofussil were to tell the jury that in his opinion the evidence was sufficient to justify them in finding the prisoner guilty, in a case in which, if the Judge had been trying the case with the aid of assessors, the High Court would, on appeal, have reversed his judgment if upon the same evidence he had convicted the prisoner, I have no doubt that the Court ought on appeal to set aside a verdict of guilty found by the jury, notwithstanding the advice was merely as to the weight of the evidence.

"So, if a Judge, instead of advising a jury not to convict upon the mere uncorroborated evidence of an accomplice, were to advise them to convict upon such evidence, or were to tell them that the uncorroborated evidence of an accomplice given under a tender of pardon was admissible, and that it was for them alone to form their opinion upon it, that a conviction founded upon such evidence would be legal, and that

such evidence, without corroboration, might be acted upon with as much safety as that of any other witness, I think the error in the direction would form a good ground of appeal.

"Now there are errors of omission as well as errors of commission, and I have no doubt that it would form a good ground of appeal against a verdict of guilty if a Judge were to call the attention of a jury to all the evidence against the prisoner, and to omit altogether to allude or call attention to the evidence in his favour. By such a summing up, the Judge would not comply with the requirement of the Code of Procedure, and a verdict found upon such a summing up ought, I think, to be set aside if the Court should be of opinion that the evidence was not sufficient to justify a conviction. I put the case merely to try the principle. It appears to me that such an omission, or an omission to follow a practice which is universally adopted by the Judges in England, and is described by Lord Abinger to be 'a practice which deserves all the reverence of law,' would be a ground of appeal against a conviction upon a verdict of guilty based upon such evidence alone, and found by a jury upon such a summing up. So, also, I think it would be error in a summing up, if a Judge, after pointing out the danger of acting upon the uncorroborated evidence of an accomplice, were to tell the jury that the evidence of the accomplice was corroborated by evidence of a fact which did not amount to any corroboration at all. When Lord Ellenborough said, 'Judges in their discretion will advise a jury not to believe the evidence of an accomplice unless he is confirmed, or only so far as he is confirmed,' he must have intended that it was their duty to do so.' 'Discretion,' says Lord Mansfield, 'when applied to a Court of Justice, means sound discretion guided by law. It must be governed by rule, not by humour. It must not be arbitrary, vague, and fanciful, but legal and regular.' "

In short, as a general rule, a Sessions Judge should go no further than giving a general commentary on the evidence, and a statement of what is the legal offence proved should such evidence be credited. (Bharut Chunder, W. R., I, C. R., 3; Gunga Bishen, *et al*, *Ibid*, 26; W. R., III, C. L., 4.)

It is no part of a Judge's duty in his summing up to combat legal objections made by the counsel of the parties: with them the jury has nothing whatever to do. (Shumshere Beg, W. R., IX, 51.)

It is a misdirection—

1. To sum up for theft where the offence committed is criminal breach of trust. (W. R., I, 2.)

2. To read over to the jury documents wrongly received, as Police diaries, which are not substantive evidence. (Hurdut Surmer, VIII, 68.)

3. To refer to previous proceedings in a former case. (Shurbrali Sheikh, VI, 2; Kishundyal, 7.)

4. To refer to a previous conviction when addressing the jury. (Mohabur Singh, W. R., VI, C. R., 64; Thakoor Dass, *Ibid*, VII, 7; Kulum Sheikh, *Ibid*, X, 41.)

5. To omit to bring before the jury prominently facts in favor of the accused., (Jommee, VIII, 16.) It is not wrong, where the fact is expressly left to the unfettered opinion of the jury, for the Judge to aid them with his own opinion. (Shama Khankee, W. R., VII, C. R., 22.)

Misdirection will not be found where a Judge

1. Neglected to enter into details regarding the identification of stolen property. (Madhab Mal, *et al*, W. R., I, C. R., 22.)

2. Merely pointed out the contrast between the evidence for the prosecution and the conduct of the prisoner,—namely, simple denial of

the charge,—as long as it was left to the jury to decide between the opposing statements, and to credit whichever they thought most worthy of belief. (Seetanath Ghosal, W. R., II, C. R., 60.)

3. Informed the jury that, unless the prisoner accounted for the stolen property found in his possession, he might be presumed guilty of an offence under s. 411, Penal Code. (Narain Bagdee, W. R., V, C. R., 3.)

4. Nor where O deposed that he and R were four days in company at M, and the Judge charged the jury that, if they found that R was not in company with O during those four days at M, but was at S, it did not matter where O was, because it was clear that he could not have been in company with R at M, and must therefore have given false evidence when he said that he was during those four days in such company at M. (*Held* by the majority of the Court—Seton-Karr, J., dissenting—Ram Monee Sein, W. R., VII, 105.)

5. Nor where a Sessions Judge left the jury to decide upon the age of a girl who had been kidnapped, merely aiding them with his own opinion in which they expressed their concurrence. (Shama Khankee and others, W. R., VII, 22.)

Duty of Judge.

256. It is the duty of the Judge to decide all questions of law (*a*), and especially all questions as to the relevancy* of facts (*b*) which it is proposed to prove, the admissibility of evidence (*c*), or the propriety of questions asked by parties or their agents which may arise in the course of the trial;† and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

to decide upon the meaning and construction of all documents (*d*) given in evidence‡ at the trial;†

to decide upon all matters of facts which it may be necessary to prove in order to enable evidence‡ of particular matters to be given;

to decide whether any question which arises is for himself or for the jury; and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding.

* Act I, 1872, ss. 5—55.

† S. 4.

‡ S. 4, n. (*d*).

Illustrations.

(*a*.) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

CH. XIX. ss. 256, 257.

(*b*.) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

(*a*). A Sessions Judge should point out with the greatest accuracy the difference between murder and culpable homicide not amounting to murder; the jury have to find the fact and say upon those facts (under the guidance of the Judge as regards the law) of what offence the accused is guilty. (Shomshere Bey, IX, 51.)

In cases of culpable homicide, it is the duty of the Judge to explain clearly to the jury the provisions of s. 300. (Ganesh Luskar, S. W. R., IX, 72.)

In a charge under ss. 201 and 218, Penal Code, the Judge should draw the attention of the jury to the fact that they have to consider the belief and intention of a person trying to screen an offender. (Hurdutt Surma, VIII, 68.)

(*b*). "Fact" means and includes—

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*.) That there are certain objects arranged in a certain order in a certain place is a fact.

(*b*.) That a man heard or saw something is a fact.

(*c*.) That a man said certain words is a fact.

(*d*.) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*.) That a man has a certain reputation is a fact.

Relevant.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this [Evidence] Act relating to the relevancy of facts.

See further Appendix, "Evidence."

(*c*). It is the province of the Judge to decide on the competence of a child to give evidence; of the jury, to decide on the amount of weight to be attached to such evidence. (Hoseinee, S. W. R., VIII, 60.)

The Judge construes all written documents as to whether they are sufficient, while the jury find as to facts of sealing, delivery, &c. (Rookni Kant Mozoomdar, S. W. R., III, 28.)

(*d*). It is the duty of a Sessions Judge to explain to the jury the legal construction to be put upon a document adduced in evidence. (Queen *v.* Setul Chunder Bagchee, W. R., III, 69.)

Duty of Jury.

257. It is the duty of the Jury—

(1) to decide which view of the facts (*a*)* is true, and then to return the verdict, which, under such view, ought, according to the direction of the Judge, to be returned;

(2) to determine the meaning of all technical terms and words used in an unusual sense which

* S. 256, n. (*b*).

it may be necessary to determine, whether such words occur in documents* or not;

(3) to decide all questions declared by the Indian Penal Code (*b*), or any other law to be questions of fact;

(4) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

* S. 256, n. (*a*).

Illustrations.

(*a*.) A is tried for the murder of B.

It is the duty of the Judge to explain to the Jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the Jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*.) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

(*a*). The Judge must take care that the facts in all cases be left to the jury as in a charge of murder, the cause of death and the prisoner's connection with certain attempts to bribe the witnesses. (Kally Churn Gangooly, W. R., VII, C. R., 2.)

A jury may be satisfied with a minimum of proof, but when there is nothing which can, if believed, amount to proof, the case should not be put to the jury at all, as a verdict of guilty cannot, under such circumstances, be sustained. (Rutton Dos, W. R., XVI, 19.)

In a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the Medical Officer and discharged the prisoner, not considering it necessary that the case should go before a jury.

Held, that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence and to withdraw the consideration of the due weight to be given to the evidence from the jury. (Huroo Shah, W. R., XVI, 20.)

(*b*). For questions of fact under the Penal Code, see ss. 81, 300, 334, 335, 352, 358, 403, and 499. (Sched. IV, q. v.)

When juryman or assessor may be examined.

258. If a juryman or assessor is personally acquainted with any relevant fact,† it is his duty to inform the Judge that such is the case,

† Act I, 1872, ss. 5—55.

CH. XIX. ss. 258—263.

whereupon he may be examined, cross-examined, and re-examined in the same manner as any other witness.

* Pref. to Chap. V.
† S. 1.

259. If, in the course of a trial† with the aid of Assessors, at any time prior to the finding,‡ any assessor is, from any sufficient cause, prevented from attending through the trial,† the trial† shall proceed with the aid of the other assessor or assessors.

‡ S. 461.

Procedure when assessor is unable to attend.

If all the assessors are prevented from attending through the trial,† the proceedings shall be stayed, and a new trial† shall be held with the aid of fresh assessors.

§ S. 4.

260. If a trial§ is adjourned, the jury or assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.§

Jury or assessors to attend at adjourned sitting.

|| S. 4.
¶ S. 461.

261. In cases tried|| with assessors, the Court shall proceed to pass judgment¶ of acquittal or conviction, having considered the opinions of the assessors, but not being bound to conform to them. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

Cases tried with assessors.

A summing up of the evidence is not required in a case tried by assessors (Joga Poly), but it is not forbidden. (W. R., XI, 39.)

262. The opinion of each assessor shall be given orally, and shall be recorded in writing by the Court; but the decision is vested exclusively in the Judge.

Decision vested in Judge.

Assessors ought to give the grounds of their opinions, particularly when they differ in opinion from the Judge. (Bushmo Anent, W. R., III, 21)
The grounds of each assessor's opinion should be distinctly recorded by the Judge. (Mussamut Mina Nuggerbhatin, W. R., III, 6.)

** S. 4.

263. In cases tried** by jury, the jury may retire to consider their verdict. It shall be the duty of an officer of

Cases tried by juries.

the Court not to suffer any person to speak to, or hold any communication with, any member of such jury. When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

Verdict to be given on each charge. Judge may question jury.

The jury shall return a verdict on all the charges on which the accused is tried,* and the Court may ask them such questions as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded.

* S. 4.

Procedure where jury differ.

If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

If the Court does not think it necessary to dissent from the verdict of a majority of the jurors, it shall give judgment accordingly. If the accused person is acquitted, the Court shall record† judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.†

† S. 461.

If the Court disagrees with the verdict of the jurors, or of a majority of such jurors, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court, and may either‡ remand the prisoner to custody, or admit him to bail.

‡ S. 389, &c.

The High Court shall deal with the case so submitted as with an appeal,§ but it may convict the accused person on the facts, and if it does so, shall pass such sentence as might have been passed by the Court of Session.

§ S. 271, &c.

The law prescribes no form for the finding of a jury, and they are at liberty to return their verdict in what form they think fit. (Hari Prasad Gangooly, S. W. R., XIV, 59.)

The jury are not entitled to pronounce what the law is or to give their own definition as to what constitutes 'murder.'

The verdict "we have no doubt that the prisoner killed the deceased. We think the deceased gave him no provocation, but we do not think

it murder, because the prisoner had no object in killing him," could not be received.

In this case the Judge rightly directed them to re-consider their verdict. (Uckoor Ghose, W. R., I, 51).

But where the credibility of evidence alone is in question, as in the case of robbery or theft, a Judge cannot tell a jury to reconsider their verdict. (Sakhawut Sheikh, W. R., II, 12.) Nor again where a charge with two heads has been submitted to a jury, and they find the prisoner guilty of one but acquit him of the other, can a Judge interfere. By his sending two charges to a jury the presumption is that there was evidence in support of both charges, and therefore the Judge is bound to accept the first finding of the jury as their verdict. (Joy Kristo Ghosamee, W. R., VII, 22).

Adjournment.

Postponement of trial.

* S. 4.

264. The Court may, in its discretion, postpone the hearing of the case, and may from time to time adjourn the trial* if it considers that such adjournment is proper and will promote the ends of justice.

It is proper to adjourn a trial because a necessary witness is ill (W. R., II, C. L., 1), but not so (170, 1862), because a case in which the forged document forming the basis of the criminal charge was still pending on appeal before the Civil Court. The same applies to a case under s. 193, P. C. (S. W. R., III, C. L., 21).

† S. 4.

The same jury or assessors may try in succession several offenders.

265. The same jury may try,† or the same assessors may aid in the trial† of, as many accused persons successively as to the Court seems fit.

Documents which form the basis of a charge against a prisoner should not be buried among a mass of papers in the nuthee, but should be put either in the calendar or by themselves in an envelope or in some conspicuous part of the record where they would be seen at once. (Rutton Meah, W. R., VIII, 57.)

The deposition of a person murdered, taken before a Magistrate, and the medical evidence, should be annexed to the Sessions record. (Chintamonee Nye, petitioner, W. R., XI, 2.)

In all forgery cases sent up in appeal, the particular paper or papers said to have been tampered with should be readily accessible, and should be put with the Sessions record, instead of being buried in the record of the committing officer. (Broond Shahoo, *alias* Chundra Chatterjee, 7 W. R., 112.)

The power granted to the Civil Courts of calling for and inspecting the records of a previous trial is one that ought to be exercised with the greatest caution, and does not extend to criminal proceedings. (Jumdun Singh, W. R., XII, 73.)

There ought to be only one Session record which should be continuous, and should contain accurately and consecutively the whole of the proceedings in the trial. (Bilash Mossulmaney, S. W. R., XIV, 46.)

Notes by Select Committee on Chapter XX.

We have provided that an Appellate Court may, if it think fit, enhance the sentence passed by the original Court; but if the sentence was passed by a Magistrate, the punishment is not to exceed that which a first class Magistrate could award, and we have made provision for notice of appeal being given in certain cases to the prosecution.

We have allowed Appellate Courts desiring further evidence the option of taking such evidence themselves, or of ordering it to be taken.

With a view to emphasizing the responsibility of the Magistrate of the District for the peace and order of the district, we have provided that appeals from orders by Magistrates to furnish security for good behaviour shall, in every instance, lie to this officer.

PART VI.

APPEAL, REFERENCE, AND REVISION.

CHAPTER XX.—ss. 266—286.

APPEALS.

Appeals from officers exercising powers less than those of a Magistrate of the 1st class.

266. Any person convicted on a trial* held by any Magistrate† of the second or third class, or any person sentenced by a competent Magistrate of the second class under section forty-six, may appeal to the Magistrate‡ of the District, or to a Magistrate of the first class who has been empowered§ by the Local Government to hear such appeals.

* S. 4. † S. 20. ‡ S. 35. § S. 27.

See notes on s. 57.

A Sessions Judge cannot hear appeals from a trial held by a Subordinate Magistrate of the second or of the third class.

Only when an appeal is preferred to him can a Magistrate modify the sentence of a Subordinate of the two lower classes. (Cal. High Ct., 873, 1863).

This section gives no right over orders passed by a Subordinate Magistrate.

The appeal must be presented within 30 days from the date of the sentence appealed against. (Act IX, 1871, Sch. 152).

The Punjab Chief Court have issued the following Circular Order on appeals. (Cir. Ord. 21 of 1871):—

The Chief Court has observed a growing tendency on the part of Commissioners, and even of Deputy Commissioners, to make use of English translations or abstracts of the orders of native officers, for the purpose of disposing of appeals.

2. Sometimes the Appellate Court simply adds a line at the end, disposing of the appeal on the "foregoing grounds," so that the abstract, frequently in very bad English, becomes part of the judgment of the Court, and a copy of it is filed in the Chief Court in appeal.

3. This practice is not only objectionable in itself, as indicating a slovenly style of work, but it tends to discourage that familiarity with the vernacular without which no Judicial officer in India can be really efficient in his duties, or enjoy the confidence of the people.

4. Translators are allowed in Commissioner's Courts rather for the purpose of translating the Commissioner's orders into the vernacular, than for the translating or abstracting into English of orders of native officers. Litigants are entitled to have copies of judgments in their own language, whether that be the language of the Judge or not. Translations into the vernacular are therefore indispensable. Translations into English are not usually required by the people, nor are they necessary for European officers possessing a competent knowledge of the vernacular. The real meaning of a judgment is better arrived at through the medium of the language in which it was written by the Judge, than through the imperfect medium of a translation made by persons who are seldom equally conversant with both languages. As the warning contained in Book Circular XIV of 1870 has not proved sufficient, the Chief Court has determined to prohibit entirely the practices above described, both in Divisional and District Courts. No translators are henceforth to be employed, except where authorized by existing rules, for the translating of English into vernacular. No abstracts in English are to be made, except by the Judge himself, for his own satisfaction, if he thinks proper. No copies of abstracts are to be given to parties. The judgment should always be complete in itself without reference to any translation or abstract. No translating fees are under any circumstances to be taken from parties for the preparation of English translations or abstracts of vernacular proceedings and orders.

5. Commissioners will be held responsible that these orders are fully enforced in their divisions, and for bringing to notice any infraction of them.

Appeals in bad livelihood cases.

267. Any person required by a Magistrate of the first class to give security for good behaviour, under section five hundred and four or section five hundred and five, may appeal to the Magistrate* of the District.

* S. 35.

This improvement on the old Act is but fair to Magistrates of the District who are responsible for the welfare and security of the territory under their charge.

The limitation law (Schedule I, 152) prescribes thirty days from the date of the order appealed against as the period within which the appeal must be brought.

Appeals from convictions by Civil Courts.

268. Any person convicted by any Civil, Criminal, or Revenue Court, under Chapter XXXII of this Act, may appeal to the Court to which

decrees or orders made in such Court are ordinarily appealable, whatever may be the amount of the sentence passed, subject to the rules provided in sections two hundred and seventy-five, two hundred and seventy-seven, two hundred and seventy-eight, two hundred and eighty, two hundred and eighty-one and two hundred and eighty-two.

An appeal from such conviction by a Small Cause Court may be made to the Court of Session within whose Sessions Division such Court is situate.

The appeal must be lodged within thirty days from the date of the sentence passed.

Appeal from Magistrates.

269. Any person convicted (*a*) on a trial* (*b*) held by the Magistrate† of the District or other Magistrate‡ of the first class, or any person sentenced under section forty-six by a competent Magistrate of the first class may appeal (*c*) to the Court of Session.

* S. 4.
† S. 35.
‡ S. 19.

(*a*). The appeal must be lodged within thirty days of the date of passing sentence. (Chap. IX, 1871, Sch. I, 152).

No appeal where the sentence is —

(1.) One of imprisonment only not exceeding one month.
(2.) One of fine not exceeding Rs. 50, and of imprisonment in default of payment of such fine.
(3.) One of fine only not exceeding Rs. 50.
(4.) One of whipping only.
(5.) From certain convictions on summary trials, see s. 274.

This section does not apply to orders passed by a Magistrate, nor to convictions against which no appeal has been preferred Except on appeal, a Sessions Judge cannot alter any sentence passed by a Magistrate. (Cal. High Ct. 885, 1863).

(*b*). Except where a special or local (Godi Sheikh, W. R., V, 22) law lays down other procedure on appeal, conviction from sentences passed under them will lie or not as laid down in the Code.

Objections to the sufficiency of evidence are not a ground of appeal. The deposition of a single credible witness is sufficient in law. (Queen *v.* Muddun Sirdar and others W. R, II., 3).

Pleas that the prosecutor is at feud with the prisoner, and the prisoner's confession was given at the instance of the Police, are not grounds of appeal. (Gopal Doss, W. R., II, 5).

No appeal upon the merits can be entertained from a conviction which was based on no legal evidence, and which was absolutely bad in law. (Poorno Chunder Doss and others, W. R., VIII, 59).

A Sessions Judge, in trying an appeal, has to look to the offence, as charged, of which the accused has been found guilty, and to determine whether it is proved or not. He has nothing to do with the form the offence may take owing to subsequent events. A conviction for an offence for which the accused was tried will not prevent his conviction,

CH. XX. s. 269.

if guilty, of another distinct offence subsequently committed. (Meesjan Sheikh, W. R., IX, 65).

No new trial for rejection or improper reception of evidence.

The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision. (Act I of 1872).

Jurisdiction over the appeal of one person convicted by a Magistrate does not give a Sessions Judge constructive jurisdiction over the convictions of other prisoners whose sentences are not appealable. (Cal. High Ct., 922, 1864).

(*c*). In cases referred, called for or appealed, an *attested copy* of the judgment should accompany the record to the superior Court, the *original being retained:* and it is the translation of the judgment referred to in s. 464, which should be furnished to every appellant wanting a copy, and should be filed in the superior Court with his appeal, by such appellant, under s. 275. Care must be taken that no improper delay be allowed to occur in giving copies of such judgments. (Cir. Ord. N. W. P., 4 of 1862).

By Circular Order 18 of the same year, the Court direct the discontinuance of the practice of transmitting transcripts of the Sessions proceedings to the Court. In future, the original record of the Sessions Court, including the Memorandum of evidence, should be submitted with all cases referred, called for on review, or appeal to the Court; copies of all papers of peculiar and special importance, including confessions and the like, being retained. The final judgment of the Lower Court should, however, be submitted in copy. (Cir. Ord. N. W. P., VII of 1862).

A Sessions Judge ought not to call for a report from the Magistrate of the District in any case where he cannot call for the record and proceedings as in the case of a person tried by a Magistrate of the second or third class (Girdhar Dharm Dos, Bom. High Ct., VI, 33).

* S. 35.

† S. 50.

The appellant (*d*) shall, in every case, give notice (*e*) of appeal to the Magistrate* of the District, who shall, if necessary, instruct the Public Prosecutor,† (*f*) Government Pleader or other officer empowered by Government or by the Magistrate of the District to prosecute the case.

(*d*). The Judicial Commissioner, Central Provinces, 629, 1865, has directed that all petitions of appeal, unless for some strong reason, should be accepted as though coming from the accused himself.

(*e*). It is not necessary for the Court to give notice to any respondent. (Judicial Commissioner, Punjab, III, 1863).

(*f*). In the N. W. P., Pol. Cir. Ord. 2807, 1870, directs—

Court Inspectors are invariably to be present on those days which may be fixed by the Sessions Judge of their Sessions Division for the hearing of criminal appeals, in order that they may aid, by their knowledge and advice, the Government vakeel in watching the said cases on the part of Government.

Should the Court of the Sessions Judge not ordinarily be held in the same district, District Superintendents will arrange, in conjunction with the Magistrate, to be kept informed by the Government vakeel of the

dates fixed for the hearing of appeals from such district, and will ordinarily instruct, through the District Superintendent of that district, the Court Inspector of the station in which the Sessions Judge holds his Court how to proceed in the cases that come up on appeal before that judiciary. They are at liberty, however, in cases of such sufficient interest or magnitude as seem to call for this proceeding, to depute any special officer of their own Police to be present at the hearing of the appeal, to perform the work that would, in ordinary course, devolve on the Inspector present at the Judge's station.

High Court Circular letter 7 of 1870 directs all appeals in Criminal cases shall be heard only upon certain fixed days, lists of which days shall be prepared yearly, and kept always posted in some public part of the Court-house.

Upon the admission of any appeal, an entry thereof shall forthwith be made by some officer of the Court, to be appointed for that purpose by the Judge, in the list hereinafter mentioned.

All appeals shall be ordinarily heard upon the first day on which the Court shall sit for the despatch of criminal appeals after the expiry of ten days from the admission of the appeal.

Lists of all Criminal business before the Court in its Appellate Jurisdiction shall be prepared by some officer, to be appointed by the Judge for that purpose, who shall correct the same as occasion may require, and cause the same to be affixed daily in some conspicuous part of the Court-house; and these lists shall be in the form or to the purport following, that is to say—

List of Cases before the Court in its Appellate Criminal Jurisdiction.

Name of Case.	Date of Admission of Appeal.	Record received.	Date fixed for Hearing.

Appeals by persons convicted by officers invested under section 36.

270. Any person convicted on a trial* held by any officer invested with the power described in section thirty-six, may appeal to the High Court, if it appear from the sentence awarded that such officer was in such trial* exercising such special powers. No appeal in such case shall lie to the Court of Session. * S. 4.

Appeals from convictions of Assistant Sessions Judges.

Any person convicted by an Assistant Sessions Judge may appeal to the Sessions Judge if the sentence appealed against does not exceed three years' imprisonment.

CH. XX. ss. 270, 271.

A sentence of an Assistant Sessions Judge, confirmed under section eighteen by the Sessions Judge, may be appealed to the High Court.

"*The sentence awarded.*"—These words are rather obscure, and it would still be open to doubt whither would lie the appeal from a sentence which does not exceed the power given under s. 20, but which is given for an offence cognizable only by a Court of Session. The Punjab, Oudh, and Central Provinces, under the old Act, directed that such appeals should go to the Court of the Judicial Commissioner.

In these cases the original proceedings of the Lower Courts are always to be sent up. (Bk. C. 39 of 1863).

The appeal must be lodged within thirty days. See s. 269 n. (*a*).

* S. 4.

† S. 269, n. (*b*).

Appeals by persons convicted by Sessions Court.

271. Any person convicted on a trial* held by a Sessions Judge may appeal† to the High Court.

The appeal may be on a matter of fact as well as on a matter of law.

If the conviction was in a trial* by jury, the appeal shall be admissible on a matter of law only.

If such person be sentenced to death, the Sessions Court shall inquire whether he wishes to appeal, and if he signifies his intention to appeal, the Court shall inform him that his appeal must be made within seven days, and shall delay the transmission of the reference, hereinafter required, for a reasonable time, not exceeding seven days, to allow of the appeal and reference being made at the same time.

When it appears that the execution of the sentence should not be delayed, the Sessions Court may record its reasons and forward the reference at once.

In no case requiring confirmation shall the High Court grant a longer delay than is herein allowed for the presentation of an appeal.

Where the reasons given by the Sessions Court for forwarding the reference at once are sufficient, the High Court shall decide the case in the absence of an appeal.

When, under the provisions of the law in force, judgments or orders made or passed by the High Court are made or passed, either in appeal, refer-

ence or revision, by a Court consisting of more than one Judge, any difference of opinion shall be settled by adding, when the High Court is composed of more than two Judges and the Court is equally divided, one or more Judges, and in such event the judgment or order shall follow the opinion of the majority of the Judges.

See s. 269, n. (*a*).

The appeal must be lodged within sixty days of the date of passing sentence. (Act IX of 1871, Sch. I, 153.)

A person tried by a jury is entitled to an appeal on the facts, if the offence was committed before the passing of the Penal Code. (Grish Chunder Bundoo, W. R., VI, 1.)

In a case tried by jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected. (Gopal Bhereewalla, W. R., I, 21.)

Held by Peacock, C.J., in Elahi Bux, W. R., V, 88 :—

"The Code of Criminal Procedure provides that, if a person be convicted on a trial by jury, the appeal shall be admissible only upon a matter of law. But it certainly is not against the principle, or even the letter of the Code, that the Court should have power to set aside a verdict of guilty for an insufficient or defective summing up of the evidence in a case in which, in their judgment, the verdict is not warranted by the evidence."

"If a verdict and conviction could not, under such circumstances, be set aside, trial by jury in the Courts of Session in this country would be fraught with the most dangerous consequences; on the other hand, if every convict against whom a verdict of guilty is pronounced by a jury has a right to have that verdict set aside upon appeal, and to obtain his discharge whenever it can be shown that the presiding Judge has not properly directed the jury as to the degree of weight which ought to be given to particular evidence, a wide door would be thrown open for the escape of guilty men, and the due administration of the Criminal law of this country would be placed in the greatest jeopardy in those districts to which trial by jury has been extended."

The High Court will not order a copy of the Judge's notes of the evidence and proceedings upon conviction in a criminal case to be furnished to the prisoner, on the ground of alleged probable hardship. A fair *primâ facie* case as to the irregularity of those proceedings, or the illegality or impropriety of the sentence or order, must appear before the Court will call for, or direct a return of the record of the proceedings. (Subbaya Gaundan, 1 Mad. Rep., 138.)

The North-Western Provinces High Court, in Circular Order 6 of 1870, gives the following :—

Rules for the Despatch of Criminal Business.

1*st*.—Unless the Court shall, by a special order to be made by a single Judge, otherwise direct, all criminal cases which may come before the Court, as a Court of Appeal, Reference, or Revision, shall be heard by the Court on Friday of every week in which the Court may be sitting.

2nd.—Upon the admission of any appeal or application for revision of judgment, upon the record of any case being sent for, and upon receipt of any reference, notice thereof shall be forthwith entered upon a list, to be kept as hereinafter mentioned.

3rd.—Every such appeal and application for revision of judgment, revision of judgment upon the Court's own motion, and reference shall ordinarily be heard upon the first Friday on which the Court shall be sitting for the disposal of its ordinary Criminal business, after the expiry of fifteen days from the admission of any such appeal or application, or from which the record of any case shall be sent for, or from the receipt of any reference.

4th.—Lists of all criminal business before the Court shall be prepared by the proper officer of the Court, who shall correct the same as occasion shall require, and shall cause the same to be affixed daily in some conspicuous part of the Court-house, and this list shall be in the form or to the purport following, that is to say:—

List of Cases before the Court in the Exercise of its Ordinary Criminal Jurisdiction as a Court of Appeal, Reference, or Revision.

Name of Case.	Whether Appeal, Reference, or Revision.	Date on which the Appeal or Application for Revision was admitted, or on which the Record was sent for, or on which the Reference was received.	Record received.	Date fixed for Hearing.

The Officiating Judicial Commissioner prescribes (C. P. C. O. XXII of 1870) that, in future, only the judgment of the Sessions Court be submitted in copy, and that the remainder of the record be submitted in original.

This rule will apply to the Court of the Commissioner, Nagpore Division, whenever the Judicial Commissioner is absent from Nagpore.

S. 57.

No appeal in case of acquittal, except on behalf of Government.

272. The Local Government may direct an appeal by the Public Prosecutor* or other officer specially or generally appointed in this behalf, from an original or appellate judgment of acquittal; but in no other case shall there be an appeal from a judgment of acquittal passed in any Criminal Court.

Such appeal shall lie to the High Court, and the rules of limitation* shall not apply to appeals presented under this section.

* Act IX, 1871, Sch. I, 152.

The High Court may, in any case so appealed, direct a new trial† by another Court, or may pass such judgment, sentence or order as may be warranted by law.

† S. 4.

No appeal in petty cases.

273. There shall be no appeal in cases in which a Court of Session, or the Magistrate of a District or other Magistrate of the first class, passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

There shall be no appeal from a sentence of imprisonment passed by such Court or officer in default of payment of fine, when no substantive sentence of imprisonment has been passed.

Where an accused person has been convicted on his own plea,‡ whether on a trial with Assessors or by Jury, there is no appeal, except as to the extent or legality of the sentence.

‡ S. 237.

This section has been held not to apply to cases in which a person is convicted of separate offences, and punished for each of them with a sentence not exceeding Rs. 50, even though the total of such sentence in the aggregate might exceed the limits herein laid down. (Nagardi Pramanik, I B. L. R., App., 5; Morly Sheikh, W. R., VI, 51.)

These rulings apply only where the separate offences are essentially different and committed at different times and places, not where an accused has been punished separately for what are really parts of one and the same offence. (*Ibid.* See also Mean Khalifa, W. R., I, 7.)

The addition of an order for recognizances to keep the peace to a conviction, and sentence of one month's imprisonment, for being members of an unlawful assembly, will not give a ground for appeal from the sentence of a Magistrate of the first class. (Emam Ali, W. R., IX, 18. So also s. 274.)

Appeals from summary convictions.

274. There shall be no appeal in cases tried summarily, in which a Magistrate of the District,§ or a Magistrate or Bench of Magistrates invested with the powers of a Magistrate‖ of the first class, empowered¶ to act under section two hundred and twenty-two, two hundred and twenty-three, or two hundred and twenty-four, passes a sentence of

§ S. 35.

‖ S. 20.

¶ S 27.

imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

An appeal may be brought against any sentence referred to in section two hundred and seventy-three or two hundred and seventy-four, by which any two or more of the punishments therein mentioned are combined; but not against a sentence in which imprisonment is awarded in default of payment of fine and in addition thereto;

nor against any sentence which would not otherwise be liable to appeal because the person convicted is ordered to find* security to keep the peace.

* Ss. 489, &c.

Saving of sentences on European British subjects.

The provisions of this and the last preceding section shall not apply to appeals from orders passed on European British subjects under section seventy-four or seventy-six.

See note to preceding section.

Copy of sentence to accompany petition.

275. Every petition of appeal shall be accompanied by a copy of the judgment† or order (*a*) appealed against.

† S. 461.

(*a*). No order is appealable, unless special provision is made in the law by means of which it is issued for its being so appealed. See s. 286.

See s. 269, note (*a*).

Copy of sentence or order to be furnished.

276. A copy of the judgment‡ or other order passed by any Criminal Court,§ and in cases tried by Jury, of the Judge's charge‖ to the Jury, shall be furnished without delay on the application of any person affected by such sentence or order.

‡ S. 461.

§ S. 4.

‖ S. 255.

Such copy shall be made at the expense of the person applying for it, unless he is in jail, or unless the Court, for some special reason, sees fit to grant such copy free of expense.

To persons in jail the copy will be furnished on unstamped paper and without any charge for copying fees. It should be authenticated by the Presiding Judge or Magistrate. Otherwise the copy must bear an eight-anna stamp for every 360 words or fraction of 360 words

(Act VII of 1870, Schedule I, 9), and the application to obtain it must bear on it a one-anna stamp. The usual copying fees must also be paid.

See s. 269, note (*d*).

This section applies to all sentences whether appealable or not; copies of depositions, &c., need not be granted, except on the applicant's paying for the same. Book Circular XII of 1872 prescribes that all persons who are successors to the interest of the parties in a case, or pleaders empowered to take further legal proceedings in it, shall be allowed to examine the records of a decided case. They must first, however, make an application (written presumably on paper bearing a one-anna stamp ?) in writing to the Court which decided the case; one application will be enough for the examination of all papers. The Court, if satisfied, will grant the application, but if it be not complete will return the same: within a month after such application the record-keeper shall permit the applicant to examine the papers in a convenient place, taking a fee of eight annas for every hour occupied in the examination. An official should be told off to supervise the inspection: he should allow no papers to be extracted, no copies to be made, only pencil memoranda; he should assist the applicant in his search, and read papers to him if required. (Cen. Prov.)

Procedure when appellant in jail.

277. If the party appealing be in jail, he shall be at liberty to present his petition of appeal and the copy of the judgment or order appealed against to the Magistrate or other officer in charge of the jail, who shall thereupon forward the petition to the proper appellate authority.

Every facility that can be should be allowed to a convict desirous of appeal.

The Calcutta High Court Circular 9, 1867, directed that petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of Jails, be forwarded by such officers direct to the Registrar of the High Court of Judicature, intimation of the fact being at once given in each instance and in the annexed form to the Judge whose sentence or order is appealed against.

Petitions of appeal must be presented within the period allowed for appeal, and must be accompanied by a copy of the sentence or order appealed against. See s. 269, note (*a*).

Petitions not presented in time, or not accompanied as above, are not to be transmitted to the Registrar, but should be returned to the petitioner with an endorsement by the officer in charge of the Jail showing the date of presentation.

TO THE SESSIONS JUDGE OF

The undersigned begs to report, for the information of the Sessions Judge, that an appeal by the prisoner
against the Judge's sentence or order, dated
and noted at foot, has this day been presented to the Officer in charge of the Jail, and has been forwarded to the High Court, as required by s. 277 of the Code of Criminal Procedure.

Officer in charge of the Jail.

On receipt of this notice, the Judge shall forward the record to the High Court either in original, or, if that be inexpedient, a certified copy of his reasons for making the sentence or order appealed from, stating at the same time why the original record has not been sent. (Cir. Ord. 5, 1868.)

It is quite irregular for a prisoner to send a petition of appeal by post. (Harbans Sing, 95, 1865.)

Rejection of appeal.

278. The Appellate Court shall fix a reasonable time within which the appellant or his counsel* or authorized agent may appear, and it may reject the appeal if, on a perusal of the petition of appeal and the copy of the judgment† or order appealed against, and after hearing the appellant or his counsel* or authorized agent, if he appears, it considers that there is no sufficient ground for questioning the correctness of the decision or for interfering with the sentence or order appealed against.

* Ss. 57, 186.

† S. 461.

Before rejecting the appeal, the Court may call for and peruse all or any part of the proceedings of the Lower Court, but shall not be bound to do so.

The Calcutta High Court (Kasim Ali, S. W. R., XV, 67) have ordered that the Magistrate's record of the proceedings prior to commitment should always be forwarded with the Sessions record to them.

In cases tried with the assistance of a jury, the appeal can only be on a point of law, and that point must be distinctly stated in the petition of appeal, otherwise the appeal should be rejected. (Gopal Bhereewalla, W. R., I, 21; also s. 271.)

See also s. 269, n. (*f*).

A Sessions Judge, after dismissing an appeal, has power to direct that a portion of the fine paid by the appellant shall be awarded as compensation, under s. 308, to the complainant, though the Magistrate has already distinctly refused to award such compensation. (Cal. High Ct., 766, 1864.)

Notice of appeal.

279. If the Appellate Court decide to hear the appeal, it shall cause notice to be given to the appellant, and, if the appeal be to the Session or High Court, shall also give notice to the Magistrate‡ of the District, who shall inform, if necessary, the Public Prosecutor,§ Government Pleader, or other officer empowered by Government in that behalf, of the day on which such appeal will be heard.

‡ S. 35.

§ S. 57.

See s. 269, n. (*f*).

Appellate Court may alter or reverse finding and sentence, or enhance a sentence.

280. The Appellate Court, after perusing the proceedings of the Lower Court, and after hearing the appellant, his counsel* or agent, if they appear, and the Public Prosecutor,† Government Pleader or other officer empowered by Government or by the Magistrate‡ of the District in that behalf, if he appears, may alter(*a*) or reverse the finding and sentence or order of such Court, and may, if it see reason to do so, enhance any punishment that has been awarded.

* Ss. 57, 186.
† Ss. 57, 190.
‡ S. 35.

(*a*). When a case is called for by the Judicial Commissioner's Court, Oudh, all cases referred to therein, or connected therewith, if there be any, should be submitted along with it. This duty should be entrusted to an official who may be held responsible for its due performance. (Bk. Cir. XVII of 1871.)

Calcutta Circular Order 2 of 1872 direct that, as a general rule, the result of his appeal should always be furnished to an appellant convict in the following form:—

Name of Prisoner	Against whose Order the Appeal is preferred.	Order passed in Appeal.	REMARKS.

It must be borne in mind that parties are entitled to copies of the final sentence or order, with the reasons for passing or making the same, of Appellate Courts, as well as of the Criminal Courts of first instance.

A Sessions Judge has no power to order a re-trial of a person on a second charge on the same facts who has been acquitted in appeal of the offence first charged. If there was no evidence to support the charge of any offence, the accused should be acquitted; but if there be evidence of any other offence than that charged and found, the sentence should stand, unless it be excessive, or the accused was prejudiced by the irregularity. (Gopal Lukshuman, V, Bom. H. C. Crown, 25.)

A Sessions Judge cannot review an order passed by him on appeal. (Agra S. N. A., 24th November 1864.)

Provided that, if the appeal is from the sentence of a Magistrate of any class, the Appellate Court shall not inflict a greater punishment (*b*) than might have been inflicted by a Magistrate of the first class.§

§ S. 20.

(*b*). Where a Sessions Judge commuted a sentence of imprisonment to fine, but awarded a period of nine months' imprisonment in default of fine, it was held that he could not exceed the period a Magistrate can give, *viz.*, six months. (Bom. High Ct., I, 139.)

Warrants for the release of prisoners from Jail, being always addressed to the Superintendent of the Jail, should be in English. (Punj. Bk. Cir. XX of 1871.)

Suspension of sentence pending appeal.

Release of appellant on bail.

281. In any case in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the sentence be suspended, and, if the appellant be in confinement for an offence which is bailable, may order that he be released on a bail.

The period during which the sentence is suspended shall be omitted in reckoning the completion of the punishment.

But if the offence be one for which bail cannot be taken, a Sessions Judge has no power to admit to bail. (Moor Ali Kinkur Mookerjee, S. W. R., III, 57.)

Orders under this section may be passed by *one* Judge of the High Court, Calcutta. (Jhaloo Sirdar, 1864, 18.)

This section refers only to cases where an appeal is allowed, thus, where a man is sentenced to a punishment that under s. 273 cannot be appealed, and his case is under revision by the High Court, the Sessions Judge cannot admit him to bail pending such time as his case has been examined by the said Court. See Mahendra Narayan Bangabhusan, B. L. R., I, App., 7.

Appellate Court may make or direct further inquiry.

282. In any case, in which an appeal has been allowed, the Appellate Court, if it thinks further inquiry or additional evidence* upon any point bearing upon the guilt or innocence of the appellant to be necessary, may either make such further inquiry and take such additional evidence itself, or may direct such inquiry to be made and additional evidence† to be taken.

* S. 4, n. (*d*).

If the Appellate Court takes further evidence† and passes judgment and sentence, no fresh right of appeal arises in respect of such sentence.

When the evidence† has not been taken before itself, the result of the further inquiry and the additional evidence shall be certified to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the presence of the appellant may be dispensed with

when the further inquiry is made or evidence* taken.

The provisions of this Act relating to summoning† and enforcing the attendance of witnesses and their examination‡ shall, so far as may be, apply to witnesses examined under this section.

* S. 4, n. (d).
† S. 350, &c.
‡ S. 331, &c.

Neither this further inquiry is to be made, nor this additional evidence taken in the presence of jury or assessors. (S. 289.)

In the Calcutta High Court this power can be exercised by a single Judge. (Hury Pershad, VI, 85.)

When an order for further inquiry has been given, it should be promptly obeyed. (Cal. High Ct. Cir. Ord. II, 1865.)

Finding or sentence when reversible by reason of error or defect in charge or proceedings.

283. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, either in the charge or in the proceedings on or before trial,§ or on account of the improper admission or rejection of any evidence,‖ or by any misdirection in any charge to a jury, unless such error or defect has occasioned a failure of justice, either by affecting the due conduct of the prosecution, or by prejudicing the prisoner in his defence.

§ S. 4.
‖ S. 4, n. (d).

No irregularity in the proceedings up to trial§ is a sufficient ground for reversing any judgment, sentence or order made or passed in a trial§ properly held.

Appellate Court may reduce punishment.

In case the accused person has been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

The definition of the word "trial" in s. 4 should be clearly borne in mind. A trial in Session cases does not begin until the charge has been drawn up, and in warrant and summons cases until the accused appears in Court. The reason for excluding all irregularities up to trial is obvious; if they had been prejudicial, the time to have pointed it out was in the course of the trial.

"In determining whether the verdict ought to be set aside, and a new trial granted, for a defective summing up of the evidence, it appears to me that the question to be considered is not whether, upon a proper summing up of the whole evidence, a jury might possibly give a different verdict, but whether the legitimate effect of the evidence would require a different verdict. If the evidence is such that the High Court would have affirmed the conviction if the trial had been before a Judge and assessors, I think that they ought not to set aside a verdict of guilty found by a jury, merely because the Judge has not in summing up given proper caution or advice to the jury as to the weight which they might properly give to the evidence. If the verdict is set aside for such a cause upon the ground that the error of the Judge has caused a failure of justice, and that the prisoner has been prejudiced thereby, it may be necessary in some cases to grant a new trial. But if the Court is satisfied that a failure of justice has been caused, and that the evidence is wholly insufficient to support any conviction against the prisoner, and would, upon the same evidence, have reversed a conviction if the case had been tried without the intervention of a jury, there is no necessity, and I think it would be improper, to grant a new trial. In such a case the Court, having set aside the verdict, may order the prisoner to be discharged."—Peacock, C.J., *In re* Elahee Bukhsh, W. R., V, 80.

See also s. 299.

An Appellate Court may find a prisoner guilty of an offence with which he had not been specifically charged in the Lower Court if the evidence is sufficient to sustain the finding, care being taken that the punishment is reduced to that which the offender should have received for the offence actually committed, and that the accused has not been prejudiced by any error or defect either in the charge or in the proceedings of the Lower Court. (Calcutta High Court, 1864.)

Procedure in case of conviction by Court not having jurisdiction.

284. When any Court has convicted a person of an offence not triable* by such Court, the Appellate Court shall annul the conviction and sentence of such Court, and direct the trial* of the case by a Court of competent jurisdiction.†

* S. 4.

† Sch. IV.

See also s. 296.

This section does not provide for such cases, except when they come before the Court on appeal. (Atmaram Waman Bhandarkar, II Bom. High Ct., 8.)

Finality of orders on appeal.

285. Judgments, sentences, and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in sections two hundred and seventy-two and two hundred and ninety-seven.

On the question whether an appeal lies on behalf of the Crown or of any one else to the Privy Council, the following judgment was delivered (Suth. P. C. R., 481, Joy Kishun Mookerjee):—

"Their Lordships are desirous that no expression should fall from hem which in the slightest degree would throw doubt on the exist-

ence of the prerogative right of appeal on behalf of the Crown, not only under existing circumstances, but in others which might arise with reference to other dominions of the Queen which may have been acquired by conquest. There is no necessity in this case to enter into the considerations upon which the prerogative of the Crown is founded. Its existence may be presumed, and from a perusal of the case it would appear to be one of great grievance: we must then consider whether the prerogative ought to be exercised. We must recollect by granting an appeal is meant an examination of the whole proceedings on the trial to enable us to come to a conclusion on the merits. Moreover, though numberless cases must have arisen in which an application of this kind might have been made, as a matter of fact, in no instance whatever of any grievance, however great, at any time, has any attempt been made to appeal to Her Majesty in Council in a criminal case. On consideration, it is obvious that no such precedent has existed, and how that no such precedent would have been created even if an attempt had been made to call into force the power of the Crown. It may be true that, in some occasions, it is not very desirable to argue from consequences alone; but the consequences would be so entirely destructive of the administration of criminal justice, if an appeal were allowed, that they cannot be left out of consideration. Grant an appeal in this case of an individual having been convicted for causing documents to be forged, and can you deny it in capital cases?—and then where can the line be drawn? Could any rules or regulations be imposed whereby that right of appeal could be governed or could be restricted? In every case an appeal would be claimed, and the course of justice would not only be maimed, but in most cases entirely prostrated. We therefore recommend Her Majesty to dismiss the appeal."

S. 272 is on "no appeal in case of acquittal, except on behalf of Government," and s. 297 on "powers of revision."

Unless otherwise provided, no appeal to lie from judgment, order, or sentence of Criminal Court.

286. No appeal shall lie from any judgment, sentence, or order of a Criminal* Court, except in the cases provided for by this Act or by any law for the time being in force. * S. 4.

Illustrations.

(*a.*) There is no appeal against an order refusing to grant compensation, or to grant an enhanced award.

(*b.*) There is no appeal against an order of a competent Magistrate dismissing a complaint.

(*c.*) There is no appeal against an order requiring a person to furnish security to keep the peace.

(*d.*) There is no appeal against an order requiring a person to furnish security to be of good behaviour, when such order is passed by the Magistrate of the District.

(*e.*) There is no appeal against an order passed under Chapter XXXIX; nor against a report by a jury under that chapter.

(*f.*) There is no appeal against an order of maintenance.

(*g.*) There is no appeal against an order placing a name on the jury list.

(*h.*) There is no appeal against an order by a Court of Session fining a juror or an assessor for non-attendance.

(*i.*) There is no appeal against the order of a competent Court refusing to order a commitment.

(*j.*) There is no appeal against an interlocutory order, such as a claim to appear by agent.

(*k.*) There is no appeal from an order to pay compensation under s. 22 of Act I of 1871 *(an Act to consolidate and amend the law relating to trespasses by cattle)*.

Act IX of 1871 lays down thirty days as the period within which an appeal from an order appealed against must be brought. The thirty days begin to run from the date on which the order was passed—Sch I, 152.

Notes by the Select Committee on Chapter XXI.

In the Chapter on Reference, we have provided that the High Court shall have the same powers in cases tried by juries as in cases tried with the aid of assessors.

CHAPTER XXI.—ss. 287—291.

REFERENCE.

Sentence of death.

287. If the Court of Session pass sentence of death, the proceedings shall be referred to the High Court, and the sentence shall not be executed without its confirmation by the High Court.

If the accused person is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed.

Agra Sudder Nizamut Adawlut, 4 of 1862.

Regular references only to be made to the Court for confirmation of sentence of death, which should first be passed by the Sessions Judge.

When a person is sentenced to death, the sentence should direct that such person shall be hanged by the neck until he is dead.

The Judicial Commissioner, Central Provinces, orders that, when a sentence of death is sent to him for confirmation, a complete copy of the English proceedings, attested by the Commissioner's signature, should be sent up, together with the original English and vernacular papers of the Magistrate's Court. (Book Cir. 39 of 1863.)

After confirmation, follows the procedure pointed out in s. 301.

288. In any case so referred, whether tried with assessors or by jury, the High Court may either confirm the sentence, or pass any other sentence warranted by law, or may annul the conviction and order a new trial* on the same or an amended charge, or may acquit the accused person.

Power of High Court to confirm sentence or annul conviction.

* S. 4.

The Agra Court (III, 169), in a case referred for confirmation under this section, acquitted the prisoner, whose case before them was under reference, and, acting as a Court of Revision, ordered other prisoners concerned in the same case who were sentenced to minor penalties to be released.

The Calcutta High Court have sometimes adopted the second mode of procedure above-mentioned, and at others the third, as *e. g.*, cases of Deenoo Jana, 1864; Guroo Churn Palli, W. R., I, 17; Nokul Noshyo, VII, 27; and Saleem Sheikh, I, 22. *Per contra*, Sheikh Saleem, V, 41.

The sentence has been commuted to transportation for life—

(1) Where there was only a reckless assault resulting fatally, but no murderous intention. (Saleem Sheikh, W. R., I, 23; Khoaz Sheikh, V, 20; Durya, Agra, 172, 1863.)

(2) Where prisoner believed his child bewitched, and that killing the bewitcher would save the child. (Ooram Sungra, VI, 83.)

(3) Where deceased was caught in an intrigue with accused's wife. (Guroo Churn Palli, I, 17; Bhekye, 46.)

(4) Where there were doubts as to the precise part taken by the prisoner. (Baboo Lal Jhah, I, 49.)

(5) Where deceased killed purely for retaliation of an injury. (Tonoo, VI, 46.)

(6) Where it was not considered that accused was the principal offender. (Bosa, Agra, 33, 182.)

289. If the High Court think further inquiry† or additional evidence upon any point† bearing upon the guilt or innocence of the accused person to be necessary, it may direct such inquiry† to be made, or such additional evidence† to be taken.

Power to direct further inquiry, &c.

† S. 4.

Unless the Court of Reference otherwise directs, the presence of the convicted person may be dispensed with when the further inquiry† is made or evidence† taken, and neither under this section nor under section two hundred and eighty-two is such inquiry† to be made or evidence† taken in the presence of jurors or assessors.

CHS. XXI., XXII. ss. 289—292.

* S. 4, n. (d).

The result of the further inquiry* and the additional evidence* shall be certified to the High Court, and the High Court shall thereupon proceed to pass judgment of acquittal or to confirm the sentence, or to pass such sentence as it thinks fit.

Confirmation or new sentence to be signed by two Judges.

290. In every case so referred to the High Court, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such High Court consists of two or more Judges, be determined and signed by at least two Judges of such Court.

When High Court consists of one Judge.

291. When a High Court of Reference, Revision, or Appeal consists of a single Judge, such Judge shall have all the powers conferred upon two or more Judges of the High Court by this chapter.

CHAPTER XXII.—ss. 292—300.

SUPERINTENDENCE AND REVISION.

Power of High Court to make rules.

292. The High Court may make and issue general rules—

for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and

for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts;

and may also frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it thinks that a form should be provided;

and from time to time may alter any such rule or form;

and, with the concurrence of the Local Government, may make and issue general rules for regulating the practice and proceedings of all Criminal Courts† subordinate to it, and, with the like sanction, may alter any such rule;

† S. 4.

and a High Court not established by Royal Charter may, with the concurrence of the Local Government, make and issue rules for regulating the practice and proceedings of that Court, and, with the like sanction, may alter any such rule:

Provided that such rules and forms be not inconsistent with the provisions of this Act, or of any other law in force for the time being.

All rules framed by the Court, and all repeals and alterations thereof under this section, shall be published in the official Gazette.

See notes on s. 57.

Under s. 292 the Judicial Commissioner, Oudh, has made the following order:—

That all Magisterial Officers subordinate to him shall, in all depositions, whether of complainant, witnesses, or accused, record the name of the person examined, the name of his or her father, and if a married woman, the name of her husband; the religion, caste, profession, and age of the examinant, and the village or pergunnah in which he or she resides.

Calendars of trials by Subordinate Courts.

293. All Subordinate Courts shall send to the High Court such periodical statements or calendars of trials* held by such Courts, as the High Court prescribes, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences† or orders passed upon them.

* S. 4.

† S. 461.

See n. (*d*), s. 198, and Appendix, "Calendar."

Power to call for records of Subordinate Courts.

294. The High Court may call for and examine the record of any case tried by any Subordinate Court for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court.

Powers of Court of Session and Magistrate to call for record of Subordinate Courts.

295. Any Court of Session (*a*) or Magistrate‡ of the District may (*b*), at all times, call for and examine the record of any Court subordinate to such Court or Magistrate,‡ for the purpose of satisfying itself or himself as to the legality of any sentence or order passed, and as to

CH. XXII. ss. 295, 296.

the regularity of the proceedings of such Subordinate Court.

(*a*). A Court of Session has no power to interfere with an order of a Magistrate permitting a prosecution under s. 468. (Gopal Mazumdar, &c., B. L. R., Vol. VIII, Ap., p. 20.)

(*b*). A Subordinate Court must at once comply with such an order, nor can it, while the case is being examined, convict and sentence a person under s. 188 for disobeying any order contained in it, the legality of which is questioned. (Dulsukram Haribhai, Bombay, II, 407.)

The Magistrate of the District cannot send for the record of a case with a view of recording his opinion on it when such case has been decided by a competent Magistrate and appealed to the Sessions Court; nor is he to comment upon the proceedings of a Magistrate of the first class, or point out what he considers to be irregularities (see Cal. H. C., C. O., II, 1867); but this is inconsistent with opinions expressed in Bindu, W. R., VIII, 60, where, as long as any necessity for interfering with the sentence passed is not involved, he may point out and correct any irregularity he may observe. The Circular Order above quoted directs him whenever he notices any error to proceed under s. 296.

See also Agra S. N. A., 24, 1863. This section affords the means of correcting illegalities in sentences or orders, and checking irregularities of procedure in cases in which no appeal is provided by law. It is to be observed that it is not lawful for any other Court than the High Court to alter any sentence or order of any Subordinate Court, except upon appeal by parties concerned, duly made, according to the provisions of Chapter XX.

Once however a commitment has been duly made by a Subordinate Court to the Court of Sessions, the Magistrate of the District can no longer call for and supervise it, for the case at this stage becomes, so to speak, the property of the Court of Session. (See Agra S. N. A., 17 of 1864.)

Still at the same time it is in all cases competent to the Magistrate of a District to keep himself informed of the proceedings of his subordinates during the progress of any preliminary inquiry, with the view of offering such advice and suggestions for the proper conduct of such inquiry as to his greater experience may seem advisable.

In S. W. R., V, 2, Sessions Judges are directed not to record any observations on the merits of a case called for by them, unless they intend to refer it under s. 296. (Pal Charrier.)

See also s. 269, n. (*c*).

For the purposes of this section, every Magistrate in a Sessions Division shall be deemed to be subordinate to the Sessions Judge of the Division.

* S. 35.

† S. 461.

Report to High Court.

296. If the Court of Session or Magistrate* of the District is of opinion that the judgment† or order is contrary to law, or that the punishment is too severe or is inadequate, such Court or Magistrate may report (*a*) the proceedings for the orders of the High Court (*b*)—(*d*):

(*a*). The Court discovering the error should report direct. (Calcutta High Court C. O. IV of 1869.)

(*b*). The law of limitation does not apply to references like these. A superior Court is bound to refer to the High Court any case in which an illegal order or sentence may have been passed as soon as it is brought to notice. (W. R., III, C. L., 6.)

But this does not apply to cases pending before the Sessions Judge on appeal; such should be dealt with by the Judge himself under s. 280, &c.

With a view to easier examination and reference, the Panjab Chief Court, in their Book Cir. XIII of 1870, prescribe a form in which Magistrates should enter each case as they decide it.

(*c*). The power to order commitment given by this section should be exercised judicially upon the evidence before the Court,—that is, generally upon the depositions which the Magistrate has himself taken and sent up, and the Court of Session ought not to order such a commitment unless the evidence appears to it to be sufficient for the conviction of the accused within the terms of s. 226, which prescribes the conditions on which the Magistrate is to commit. Where the discretion allowed by this section has been exercised, the High Court has no authority to interfere and enquire whether it has been rightly exercised or not. (Shama Sunker Biswas, W. R., X, C. R., 27.)

(*d*). The Chief Court, Panjab, directs that references shall always be accompanied by the records and by a statement of the case in English, giving—

1*st*,—A brief abstract of the case.

2*nd*,—The sentence or order of the Lower Court, and the name of, and powers exercised by, the Magistrate passing it.

3*rd*,—The particular portion of the sentence or order in which an error on a point of law is believed to exist.

4*th*,—The grounds upon which the order of the Lower Court should be reversed or modified.

It should also be noted how much of the sentence the accused has undergone, and, if he has been sentenced to fine or whipping, whether the fine has been realized or the whipping has been inflicted. (Book Cir. V of 1870.)

So also Calcutta High Court, XVII of 1863; so also Central Provinces Book Cir. Ord., XXVI of 1870. In lieu of the last paragraph given above, the Calcutta High Court substitute the following:—

"Unless there be any particular reason why delay should be avoided, the explanation of the Lower Court should be called for and accompany the reference.

"The Court do not think it necessary to enter into any details of the particular occasions on which such references should be made to them, or to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., may give rise to a reference to them.

"It is deemed sufficient to enjoin the exercise of a sound discretion in making these references to the Court, so that neither important errors and omissions may escape correction, nor the time of the Court be needlessly engrossed by matters not demanding their interference."

Panjab Book Cir. XI of 1871 points out the distinction between cases in which the referring officer considers that the sentence or order requires to be altered by the Chief Court, and cases in which irregularities of procedure have occurred not requiring an alteration of the sentence or order. The former must, in all cases, be sent up to the Chief Court, because no other Court is competent to alter a sentence or order except on appeal.

CH. XXII. ss. 296, 297.

In the latter class of cases, it is discretional with the Commissioner or Deputy Commissioner to refer the proceedings to the Chief Court for orders. The power of calling for the records of Subordinate Courts is given to those officers for the purpose of satisfying themselves as to the legality of any sentence or order passed, and also as to the regularity of the proceedings of such Subordinate Courts. It is not every irregularity that requires to be reported to the Chief Court, and to be commented on by it in a formal order on the revision side. Where a similar irregularity has been reported on before and disposed of by an order of the Chief Court, where the irregularity is trifling, and the accused has not been prejudiced, or where there has been no failure of justice on account of the irregularity, the Commissioner or Deputy Commissioner is authorized to point out the irregularity to the Court concerned, and prevent its recurrence, and need only forward the proceedings to this Court if there are any special grounds for so doing.

* S. 4.
† S. 35.
‡ S. 140.
§ S. 147.
‖ Ss. 195, 215.
¶ S. 295.
** S. 189, &c.

Provided that in Session cases,* if a Court of Session or Magistrate† of the District considers that a complaint‡ has been improperly dismissed,§ or that an accused person has been improperly discharged‖ by a Subordinate¶ Court, such Court or Magistrate may direct the accused person to be committed for trial.**

Powers of revision.

297. If, in any case either called for by itself or reported for orders, or which comes to its knowledge, it appears to the High Court that there has been a material error in any judicial proceeding of any Court subordinate to it, it shall pass such judgment, sentence, or order thereon as it thinks fit.

Power to order commitment.

If it considers that an accused person has been improperly discharged,†† it may order him to be tried,‡‡ or to be committed§§ for trial ;‡‡

†† Ss. 195, 215.
‡‡ S. 4.
§§ S. 189, &c.

Power to alter finding and sentence.

If it considers that the charge has been inconveniently framed, and that the facts of the case show that the prisoner ought to have been convicted of an offence other than that of which he was convicted, it shall pass sentence for the offence of which he ought to have been convicted:

‖‖ S. 439.

Proviso as to power of altering finding.

Provided that, if the error in the charge‖‖ appears materially to have misled and prejudiced the accused person in his defence, the High Court shall

annul the conviction, and remand the case to the Court below, with an amended charge, and the Court below shall thereupon proceed as if it had itself amended such charge.

Power to annul conviction.

If the High Court considers that any person convicted by a Magistrate has committed an offence not triable* by such Magistrate, it may annul the trial* and order a new trial* before a competent Court.

* S. 4.

Power to annul improper and to pass proper sentence.

If it considers that the sentence passed on the accused person is one which cannot legally be passed for the offence of which the accused person has been convicted, or might have been legally convicted upon the facts of the case, it shall annul such sentence and pass a sentence in accordance with law.

If it considers that the sentence passed is too severe, it may pass any lesser sentence warranted by law; if it considers that the sentence is inadequate, it may pass a proper sentence.

Suspension of sentence.

The High Court may, whenever it thinks fit, order that the sentence, in any case coming before it as a Court of Revision, be suspended; and that any person imprisoned under such sentence be released on bail,† if the offence for which such person has been imprisoned be bailable.

† S. 388.

Powers of revision confined to High Court.

Except as provided in sections three hundred and twenty-eight and three hundred and ninety-eight, no Court, other than the High Court, shall alter any sentence or order of any Subordinate Court, except upon appeal by the parties concerned.

Optional with Court to hear parties.

No person has any right to be heard before any High Court, in the exercise of its powers of revision either personally or by agent; but the High Court may, if it thinks fit, hear such person either personally or by agent.

Where an accused had had full opportunity given him to answer the case which was made against him, the High Court held that they would have been precluded from interfering with the judgment of the Lower Court even if it found that there was an irregularity in the proceedings owing to a formal charge being absent. (Ramdhyal Sing, S. W. R., XV, 3.)

The High Court cannot entertain an application to review a judgment passed by it on appeal in a criminal case. No Subordinate Criminal Court has the power to review its own judgment. (Godai Raout, W. R., V, 61.)

Where a Judge dies after hearing and deciding a case, the only record of his decision being an entry in the Court Order-book, it is not competent to any co-ordinate Court to take up and re-hear the case; but the High Court will, on the ground of want of record of reasons for the decision, reverse the order and remand the case for re-hearing. (Sukram *v.* Kala Kahar, 3 B. L. R., A. C., 105.)

The Sessions Judge on appeal, without trying the merits of the case, reversed the Magistrate's conviction in a case of theft upon a point of law, reading the Penal Code by the light of his knowledge of the English law. The High Court reversed the Sessions Judge's reversal of the Magistrate's conviction, upon the ground that his decision was wrong in point of law, and directed him to re-apprehend the accused, and re-hear the appeal on the merits. The Sessions Judge thought that the High Court had no power to order the re-apprehension of the accused, and, proceeding to re-hear the appeal in the absence of the accused, acquitted him. *Held*, that the re-trial in the absence of the accused was a nullity; that if the accused had been convicted instead of being acquitted, the case must have been re-tried; but that as the Sessions Judge had declared his opinion that the evidence did not make out a case of guilt, it would be merely vexatious to the accused to insist upon the Sessions Judge obeying the order of the Court, and re-trying the case in the presence of the accused. The High Court had full power to make the order, and the disobedience of the Sessions Judge and the course he thought fit to adopt were highly censurable. (Madaree Chowkeedar, W. R., III, 4.)

Where an accused person was charged before one officer by A, and was convicted, and before another officer by B for a similar offence committed on the same day, and was acquitted with a recommendation that the conviction in A's case be quashed as the result of a conspiracy; it was held that, neither under this section nor the next could the Court set aside the finding of a Lower Court on extraneous evidence derived from another suit. Application should be made to Government. (G. Hart, VI, 42.)

Where the offence complained of and proved was one beyond the jurisdiction of the Magistrate, he was held to have improperly convicted of a lesser offence instead of committing the case for trial by the Court of Session. The conviction was accordingly reversed as illegal. (Bhutto Doure, W. R., IX, 5.)

Held, that the High Court, under its general powers of superintendence, has power to quash an order made by a Magistrate for the issue of a warrant in a case in which he had no jurisdiction whatever so to proceed. (In the matter of Bunkoo Behary Ghosh, W. R., XI, 26.)

A Sessions Judge may direct a committal by any Magistrate empowered to make commitment to Sessions. (Sekraj, N. W. P., 9th April 1870.)

When a Magistrate is ordered under this section to commit a person dischaged under s. 195 for trial, he need not begin again *de novo*, but should proceed under ss. 198 and *seq*.

In re Bisheshur Pershad, N. W. P., 3rd December 1870, the High Court refused to hear an application from an accused person against whom proclamation has been issued, as, until he had surrendered himself, they regarded him as in contempt.

Cases called up for revision by the Oudh Judicial Commissioner should be reported to him in the form provided in Circulars 44—66, dated 6th February 1872.

To Judicial Commissioner, Central Provinces, the original papers of the Lower Courts should invariably be sent. (Book Cir. 39 of 1863.)

Courts may order inquiry.

298. The High Court, the Court of Session, or the Magistrate* of the District may order any subordinate Court to inquire† into any complaint which has been dismissed under section one hundred and forty-seven.

* S. 35

† S. 4.

A Court of Session has no power to direct a Magistrate to commit to him a case in which such Magistrate has jurisdiction to try and which he has so tried and passed sentence: if the Judge consider such sentence an inadequate one, he should move the High Court to take notice of it under s. 297.

The Subordinate Court must obey such orders to inquire, and on inquiry should either discharge under s. 195, or commit under s. 196. It is not bound to report the former, but the Sessions Court can call for the record and order commitment. (Cal. High Ct., 432, 1863.)

The words "without inquiry" mean without a "proper" inquiry, for in a case in which the evidence taken does, in a Judge's opinion, warrant the commitment of an accused person, the Judge can so order it without any further inquiry; but when a Judge sees that there are *primâ facie* grounds for supposing that a charge for such an offence is well-founded, but that the Magistrate has dismissed it without a proper inquiry, he can order such to be made. (W. R., III, C. L., 22.)

Can a Sessions Judge order a Magistrate to hold an inquiry into the case of a person who would appear, from the evidence given on the trial of others, to have been concerned in the commission of an offence, but who had not been complained against or brought before a Magistrate? (*Ad huc sub judicē lis est.* See Hurree Chunder Nundee, W. R., VII, 38.)

The Magistrate before whom such complaint is duly made may, if, after examining the complainant, in his judgment there is no sufficient ground for proceeding, dismiss the complaint.

Order on revision to be certified to Lower Court or District Magistrate.

299. Whenever a case is revised by the High Court under this chapter, it shall certify its decision or order to the Court in which the conviction was had or by which the order was passed; or, if the conviction or order was passed by a Magistrate other than the Magistrate‡ of the District, to the Magistrate‡ of the District.

‡ S. 35.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, the record shall be amended in accordance therewith:

In cases revised by the High Court under this chapter, the High Court shall not alter or reverse the sentence or order of the Court below, except as herein provided; nor shall it reverse or set aside the verdict of a jury, unless it is of opinion that the jury was misdirected by the Judge. In that case it may set aside the verdict and direct a new trial,* if it think fit to do so.

* S. 4.

See notes to s. 255 and to s. 283.

A re-trial in the absence of the accused is a nullity. (Madaree Chowkeedar, W. R., III, 4.)

The Agra Court and the Judicial Commissioner of the Panjab (R. 107, 1864) have ruled that, in every case where sentence has been confirmed, or another sentence has been passed by the High Court, the Sessions Judge, on being informed thereof, issues the necessary warrant.

A summing up to the jury in which the Sessions Judge gave no aid to the jury in the arrangement of the facts which were spoken to by the witnesses, and himself found facts which he should have put to the jury, was pronounced defective, and a verdict founded thereon was set aside, and the prisoner ordered to be released. (Queen *v.* Ram Gopal Dhur, W. R., X, Cr., 7.)

Provisions of section 283 to apply.

300. The provisions of section two hundred and eighty-three shall apply to revision orders under this chapter.

Finding or sentence when reversible by reason of error or defect in charge or proceedings.

283. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, either in the charge or in the proceedings on or before trial, or on account of the improper admission or rejection of any evidence, or by any misdirection in any charge to a jury, unless such error or defect has occasioned a failure of justice, either by affecting the due conduct of the prosecution, or by prejudicing the prisoner in his defence.

No irregularity in the proceedings up to trial is a sufficient ground for reversing any judgment, sentence, or order made or passed in a trial properly held.

Appellate Court may reduce punishment.

In case the accused person has been sentenced to a larger amount of punishment than could have been awarded for the offence, which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

PART VII.

EXECUTION.

Notes by Select Committee on Chap. XXIII.

We have given authority to the High Court to postpone and commute a sentence of death passed on a pregnant woman.

We have provided that, when a person sentenced to whipping is incapable, on medical grounds, of undergoing the whole of the sentence, the Court may pass any other sentence in lieu of the part of the whipping not undergone.

In cases where the punishment consists only of fine, we have provided that the imprisonment, in default of payment of fine, shall not exceed the imprisonment the Court is competent to inflict as a substantive sentence.

In order to render s. 75 of the Indian Penal Code operative, we have provided that persons coming within its provisions shall ordinarily be committed.

We have empowered the Governor-General in Council and the Local Government to revoke a conditional pardon granted by him or by it. This is to meet the difficulty of proving in a Court of Justice that a man knows more than he pretends to know.

We have provided, generally, that distress warrants may be executed in the district in which they are issued, and in any district in which they may be endorsed.

CHAPTER XXIII.—ss. 301—322.

Procedure in cases referred to High Court for confirmation.

301. In cases* referred by the Court of Session for the confirmation of a sentence of death by the High Court, the proper officer of the High Court shall, without delay, after the order of confirmation† or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

* S. 287.

† S. 290.

Such Court shall, if the sentence be confirmed or commuted, issue a warrant to the officer in charge of the jail in which the prisoner is confined, to cause the sentence or order to be carried into execution; or, in the case of any other orders, shall cause such orders to be carried into effect.

See note to s. 287.

One warrant is enough for all involved in one sentence. (Cal. High Ct. Cir. Ord. 10 of 1865 and 3 of 1867.)

The Calcutta High Court expect no Sessions Judge will close his Court for the Dusserah vacation as long as the orders from his Court regarding any capital sentence have not been received. For subsequent procedure, see s. 303.

CH. XXIII. s. 302.

* S. 4.
† S. 431.
‡ S. 35.

Court of Session to send copy of finding and sentence to District Magistrate.

302. In cases tried* by the Court of Session, the Court shall forward a copy of its finding† and sentence to the Magistrate‡ of the District in which the trial* was held.

Warrant of execution.

If the accused person is sentenced to transportation, imprisonment, or whipping, the Court (*a*) shall forthwith forward him, with a warrant (*b*) for the execution of the sentence, to the officer in charge (*c*) of the jail of the district in which the trial was held (*d*).

(*a*). *i. e.*, Session Court.
(*b*). See notes to s. 303.
(*c*). Magistrates are directed, in the absence of any officer specially gazetted to the charge of the Jail of their district, to assume charge of it pending further orders. (Cir. Ord., N. W. P., I of 1864.)
(*d*). European prisoners should be forwarded to the nearest central prison, where there is accommodation for them,—*viz.*, either to Allahabad, Agra or Meerut, not to Bareilly, Futtehgurh or Benares, where there are at present no cells for Europeans. (G. O., N. W. P.)

The warrant shall state the offence of which the accused person has been convicted and the period during which he is to be transported or imprisoned (*e*), and the nature (*f*) of the imprisonment, or other punishment.

(*e*). A sentence of imprisonment ought to commence from the time that it is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 316 and 317, a Magistrate cannot authorize a sentence passed by him to take place from some future date, nor, except as provided for by s. 297, can a sentence, which is to take place immediately, be suspended. (In the matter of Krisnanand Bhuttacharjee, B. L. R., III, A. 50; W. R., XII, 47.)
(*f*). Agra Circular Order 14 of 1864: the law does not warrant the imposition of any degree of labor on persons sentenced to *simple imprisonment* under the provisions of the Penal Code.

The term "hard labor," used in the Penal Code, in defining "*rigorous imprisonment*," is merely the usual term applied to "prison labor." No definition of "hard labor" is given in the Code, nor does the term seem to be used in contradistinction to "light labor," but simply means "labor" as distinguished from "no labor."

The Government of India (Home Department, No. 262 of 1865), the Judicial Commissioner, Punjab (VIII, 1865), Oudh (V, 1865), Central Provinces (237 of 1864), all have expressed their opinion that simple imprisonment means only confinement in Jail subject to the Jail rules as regards diet. Prisoner sentenced to simple imprisonment may, with their own consent, be employed in trades or occupations permitted by the Jail rules (Cal. High Ct. Cir. Ord. 2 of 1865.)

By Calcutta High Court Circular Orders 13 of 1863, 12 of 1864, and 3 of 1867, the term of suspension of a sentence pending an appeal should not be calculated in reckoning the term of imprisonment.

The Magistrate or other officer in charge of the Jail should issue a separate warrant for each prisoner to the Jailor, stating the offence of which he has been convicted, the period during which he is to be imprisoned, and the nature of the imprisonment; this warrant should accompany the prisoner wherever he may be transferred. And on completion of the sentence it should be returned to the Court from which it issued, with an endorsement certifying the manner in which the sentence has been carried into execution. In the North-West Provinces, no warrant, save the original one, is ever required, unless one prisoner out of a number be transferred, and the remainder are left in the original Jail; in this case a copy of the original warrant accompanies those who are transferred. As regards transportation, see s. 319.

Procedure after sentence passed by Court inferior to Session Court.

In cases tried* by any Court inferior to a Court of Session, the Court passing the sentence shall forthwith forward the accused person, with a similar warrant for the execution of the sentence, to the officer in charge of the jail of the District in which the trial* was held (*g*). * S. 4.

(*g*). Prisoners must not be hindered from executing vakalutnamahs to any one they please. (Sheikh Dadabhai, Bom., I., 16.) Every facility is to be allowed them in preparing an appeal.

The following register ordered to be kept in the Court of all Sessions Judges:—

Register of Warrants.

1	2	3		4		5			
Name of Prisoner	Date of Sentence.	Term of Imprisonment.		When the Sentence will expire.		Warrants when received from the Jailor or Magistrate.			MEMO.
		Years.	Months.	Month.	Date and Year.	Month.	Date.	Year.	

By Circular Order 9A. of 1864, North-West Provinces, children in arms, and under two years of age, should remain with their mothers; but when of or beyond that age, they should never be allowed to accompany their mothers to Jail, or remain with them in confinement. The Magistrate of the District, of which the prisoner is a resident, should be charged with the duty of arranging for the proper care of such children. If any relative be willing to take them, they should of course be made over to him; and if the father can provide for the child, he should be compelled to do so under s. 536. But if the father be dead, in Jail, or not forthcoming, and the relatives will not take the child, the Magistrate

should make the best arrangement possible, either by placing the child in some institution, or by entrusting it to some respectable person to bring up. Charges on this account, countersigned by the Commissioner, should be included in the Judicial Contingent Bill of the Magistrate.

For the procedure to be followed when prisoners enter the Jail, are tranferred from one Jail to another, and for all information relative to their state once the prison door has closed upon them, see Act XXVI of 1870 and notes in App.

Ordinary offenders, when they have served their term of imprisonment, are released at the Jail door, and no further notice taken of them, but in certain cases this is not all. For release of time-expired convicts, see that head in Appendix.

Form and direction of warrant of commitment.

303. Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge or Magistrate who issues it, and shall be directed to some jailor or other officer or person having authority to receive and keep prisoners, and shall be in the Form (C or D as the case may be) given in the second schedule to this Act or to the like effect.

By Agra Circular Order VII of 1866, the High Court direct that full particulars of the residence of the convict shall invariably be inserted in warrants of imprisonment issued from Sessions Courts. So also Calcutta High Ct. VII of 1868.

All warrants should distinctly state whether the imprisonment awarded is to be either rigorous or simple. Previous convictions should always be noted on the warrant committing a prisoner to Jail, and also the fact that he is a professional or habitual offender if such be known. Should information of this nature reach the Police after the offender has been sent to Jail, it should be communicated at once to the officer in charge of the Jail where the offender is confined, that he may note it when preparing remission statements. (Punj. C. Memo. 2,336 of 1870.)

Warrant with whom to be lodged.

304. The warrant of commitment shall be lodged with the jailor, if he be in the jail; and if he be not in the jail, with his deputy.

If the jailor has no deputy, the warrant may be lodged with any officer of the jail then being in the jail.

Execution of sentence under section 301 or 302.

305. Upon the receipt of a warrant under section three hundred and one or three hundred and two, the officer in charge of the jail shall cause the sentence to be executed, and shall return

the warrant, when the sentence has been fully executed, to the Court from which it issued, with an endorsement under his signature, certifying the manner in which the sentence has been executed.

The Governor-General in Council, by an order of 17th July 1868, directs that the practice of giving sweetmeats or extra diet to prisoners sentenced to death be at once discontinued.

See Government Order 868 of 1864 of the North-Western Provinces. The extreme penalty of the law is to be carried into execution no where else but in the district wherein the circumstances of the crime visited by it are the most likely to be generally known, and in which the most impressive effect may be expected to be produced by the example.

Gallows are to be erected only on occasion of an execution, and then at once removed: they are not to be left standing. (Cir. Order, N.-W. P., 20 of 1869.)

Superintendents of Police are bound to supply a sentry for condemned criminals.

The darogah will be responsible that no poisonous drug is introduced in the food of a condemned criminal; but, to make sure that no attempt at self-destruction is made, the prisoner should be attached securely to an ordinary bell-chain in the condemned cell, the door of which should be left always open, and the criminal kept in view of the sentry on duty. (Pol. Cir. 13 of 1870.)

It is the duty of the Police to keep order at executions.

The certificate of execution should be returned in the form prescribed for the same by the High Court.

The time and place for carrying out the sentence, and any order for the disposal of the corpse, should be given by the Sessions Court. (Calcutta H. Ct., 1863.)

Postponement of capital sentence on pregnant woman.

306. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence.

Levy of fine.

307. Whenever an offender is sentenced to pay a fine,* the Court which sentences him may issue a warrant for the levy of the amount by distress and sale of any moveable (*a*) property belonging to the offender, whether or not the offence† be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.†

* S. 15, n.

† S. 141, n. (*b*).

Such warrant may be executed within the jurisdiction of the Court that issued it, and it shall

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authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court, when endorsed by the Magistrate* of the District in which such property is situated.

* S. 35.

Section to what cases applicable.

This section shall not apply to cases in which any special procedure is laid down by any special or local law, in force for the time being, for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes into force, but which might have been levied under this section if it had been in force when they were imposed.

Who may issue warrant.

The warrant may be issued either by the Judge or Magistrate who passes the sentence or by his successor in office.

The following is the definition prescribed by the General Clauses' Act for moveable property:—

"Immoveable property."

(5). "Immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

"Moveable property."

(6). "Moveable property" shall mean property of every description, except immoveable property;

The note on s. 15 contains a full account about fine as an additional, alternative, or in default sentence, and should be consulted.

There is no way in which immoveable property can be made liable. (Bom. H. Ct., V, 63, Lala Wakwar.)

Rules concerning fines which are of general application, save where distinct mention is made of the locality to which they belong.

I. Criminal Courts, before sentencing an offender to pay a fine only, would do well to notice the provisions of the particular law under which they sentence; thus, such a sentence under the 2nd clause of s. 211 or under s. 344, Penal Code, is illegal. (Bama Bin Ram Bhagee, I Bombay Report, 34, see also p. 39.)

II. In passing sentence consideration should be had, as far as practicable, to the power and means of the offender to pay. To demand more than a man possesses is attended with results which call for careful consideration prior to passing sentence: it can never be advantageous either to justice or society to involve an innocent family in the ruin of one of its members, or again to drive an offender immediately on his release from jail into a new career of crime by depriving him of all means of subsistence. Similarly, in petty cases no thinking Magistrate, unwilling to disgrace an offender by imprisonment, would sentence him to a fine which forces him either into prison or else into borrowing such an amount as must temporarily ruin him.

(See Esp. Circulars of Judicial Commissioners and Oudh, also High Court, North-Western Provinces, VIII of 1862.) [O. R. XV.]

III. If a fine is not paid immediately on passing sentence, is the sole punishment awarded, is inflicted on an offender notoriously a man of substance residing in the same district, and is imposed for a non-heinous offence, the Magistrate is at liberty to allow him to remain at large on bail or personal recognizance, so that he may make arrangements for paying the fine. In the Central Provinces, a week is the utmost limit allowed.

IV. Every fine imposed should at once be entered in the register appointed for that purpose. (In Lower Bengal, these registers will be examined by the Commissioner of the Division and not by the Sessions Judge. C. O. V of 1872.)

(*a.*) In the North-Western Provinces, the fine should be entered by the presiding officer in his own handwriting in the form prescribed in Accountant-General's Circular Order 117 of 1866.

(*b.*) The above rule has been made purely optional by Government Order 40A of 1870, which directs a vernacular register of the same form as the English one to be kept in each Court by the misl-reader. The presiding officer should affix his signature to the date of each entry of a fine and to cash payment on account of a fine.

(*c.*) The vernacular register should be checked by the Magistrate as opportunity offers.

(*d.*) Either register should, on the first of each month, be forwarded to the Treasury Officer for comparison with his accounts.

(*e.*) In the Central Provinces, it is directed that a separate serial number be given for each person entered in column 4 of its register; enough space be left under each such entry for repeated entries in columns 13—19 as successive attempts are made to realize. The amount of fine remitted on appeal or revision to be distinctly shown in columns 9 and 10.

(*f.*) Whenever a sentence of fine is passed by any of the Courts at the Sadr Station, the officer presiding will enter the same in his own handwriting under the proper headings of the Fine Statement. If for any special reason he cannot do so, he will see that the entry is made by the Court Moonshee, attaching his initials thereto. The Court Moonshee will be responsible for seeing that a corresponding entry is made in the Nazir's Register. [O. R. III.]

(*g.*) A register of the fines imposed in all the Courts of the district will be kept up by the Nazir of the Sudder Court. [O. R. II.]

(*h.*) Whenever a sentence of fine is passed by a Tahsildar Magistrate, the Munshi of the Court will forward a memo. in form A (sanctioned Form No. 111) by post to Nazir of Sadr Court. [O. R. IV.]

(*i.*) Whenever a sentence of fine is passed, a copy of memo. (Form A) is to be attached to the misl. [O. R. VI.]

(*j.*) The Nazir of the Sadr will receive the fines of all Courts, lodge them in the Treasury, and take the receipt of the Treasurer for the same in his fine register. Payments of all fines to be noted in the fine statements of the Courts concerned, and also in the memorandum Form A. The Nazir at the Tahsil or an officer nominated by the Tahsildar will receive the fines imposed by the Tahsildar, lodge them in the Tahsil, taking the receipt of the accountant for the same, both in his fine statement and on the memorandum Form A, and forward the latter to the Sadr Nazir. [O. R. VII & VIII.]

(*k.*) When a Police Officer has to remit a fine realized under the order of an Honorary Assistant Commissioner, he will forward the memo. alluded to in (*h*), and which will be given by the Moonshee of the Court to the Tahsil, together with an "arz-irsáil," showing the

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parties in the case, the party fined, and the date of the order for fine, besides its amount and the amount realized. He will obtain from the Tahsildar a dakhila in the same terms, and the Tahsildar will return the memo. signed by himself and the accountant. This memo. will be made over to the Honorary Assistant Commissioner's Court Munshi, to be filed in the record of the case. The dakhila should be transmitted by the Police to the Sadr Nazir, who will enter the amount realized in his fine register, and then send it to the Treasury office. The Treasurer and the Jamma-kharch Navis, after satisfying themselves that the Tahsildar has given credit for the item in the tahsil siaha, will sign the Nazir's fine register, and countersign the dakhila, returning it to the Police. [O. R. V & IX.]

V. At the same time that the fine is entered, a warrant or separate written and sealed order for its levy should be addressed to the Court Inspector (in Oudh to any Police officer apparently); in the Punjab the writ when issued by a Tahsildar or Subordinate Magistrate will be addressed to the Police officer in the limits of which the defendant resides.

VI. At the same time the sentence should be thoroughly explained to the prisoner and to his friends, if in Court; if this be carefully done, the fine will often be realized without any further trouble.

VII. There is nothing in the law to prevent immediate action being taken for the levy of the fine. An Appellate Court cannot order a subordinate to stay proceedings for its realization until the result of the appeal be known.

VIII. Where a special or local law order any particular procedure, the provisions of that law must be put in force through the agency of the Police.

Thus in the Railway and some other Acts it is directed that a man be detained until the return of the distress-warrant before an alternative sentence of imprisonment be awarded.

IX. Ordinarily if the fine be not paid at once and imprisonment have been awarded as an additional or in default sentence, the prisoner will at once be forwarded to jail.

X. Sessions Judges should issue their own warrants. The Calcutta High Court directs that where fine is an additional or in default sentence, they shall send duplicate warrants: each of these should contain the sentence written in full, but the one addressed to the Magistrate shall contain the words relating to imprisonment scored through with red ink, and similarly the words relating to fine should be scored through in the warrant addressed to the officer in charge of the jail.

When the whole fine has been realized prior to the expiration of the sentence of imprisonment, the Magistrate shall report the fact to the officer of the jail, who will then release the offender either immediately or as soon as the substantive sentence of imprisonment shall have expired: when only part has been realized, the Magistrate shall report the act for the orders of the Sessions Judge.

(C. O. II of 1871.) Double warrants are always used in such cases in the Central Provinces: the one for fine remains with the Court Inspector, who, if necessary, will endorse on it "not paid," and hand it over to the darogah; the darogah attaches it to the regular warrants.

XI. Where the fine is not realized at once, and there is every reason to believe that the default is owing solely to the offender's preferring to undergo punishment, the warrant should issue with a certain time fixed in it for its return (in the Central Provinces and Panjab a fortnight). [O. R. XVII & XVIII.]

XII. On receipt of this writ the Police will at once proceed to explain the amount to, and make an oral demand for it from, the convict's friends in the village.

XIII. If the fine be paid by them, the amount must be remitted by the Police without delay.

In the Panjab it is to be made over to the nearest Tahsil Treasury, unless the Sudder office be nearer the residence of the offender. The Tahsildar will acknowledge the receipt of the money on the back of the writ, and return it to the Police. The original writ thus receipted will be returned to the Sudder office. The money, if paid into the Sudder, should be sent with the original writ: the Court Inspector will receive both and endorse on it the date on which the money was paid to the Sheriff or the Treasury, and the serial number of the Treasury receipt.

XIV. When the fine has been paid or any portion of it, notice should be given to the jail darogah of the immediate cessation or partial remission of the sentence.

XV. If the fine be not realized within the period allowed, the writ will be returned properly endorsed, according to the circumstances of the case.

XVI. As soon as it is evident that the fine will not be paid, the Police should enforce the warrant by distress and sale of all moveable property belonging to the offender within the jurisdiction of the Court which issued it, and beyond when endorsed as prescribed by law. (In the Panjab, fines are recovered like any other judgment-debt, and not by the Police: agricultural implements never to be attached save from unavoidable necessity.) In the North-Western Provinces, the duty of conducting sales for the levy of fines inflicted by judicial sentence is to be entrusted to one or other of the Tehseel Omlah at out-stations, and at the Sudder Station to the Revenue Nazir, or to such other official on the Revenue Establishment as the Collectors may choose to select. (No. 6A of 1864.) [O. R. XIV & XVI.]

XVII. The Police should make an inventory of all distrained property before two credible witnesses, and, unless any objection be raised, proceed to sell it. (In the North-Western Provinces the Police are prohibited from holding these auctions, but the rule is by no means strictly observed: an official appointed by the Magistrate should do it.)

XVIII. If any objection be raised, the objector should be called upon for proof, and a reasonable time allowed him to bring such, and the sale be in the meantime delayed; but if the claim be intricate, involved, or one not proved to the satisfaction of the Court, the objector should be referred to the Civil Court.

XIX. Fraudulent claims are punishable under s. 207, Penal Code, and an objector should be warned of the risk he runs in making them.

XX. If the fine be one under the Penal Code, and still remains unrealized, the Police should be instructed to forward any information that may reach them of any moveable property that may accrue to the accused, or subsequent to the first warrant be found to be his, to the Court that issued the original warrant.

XXI. Upon receipt of this information a fresh warrant like the first should be issued. This can be done at any time within the period of six years from the passing of the sentence, or if the accused be under sentence of imprisonment for more than six years, for any time while he is so in prison. [O. R. XIX.]

XXII. In Oudh it is directed that, in the majority of cases, it is unadvisable to take action under s. 70, Penal Code, unless it can be shown to the statisfaction of the Commissioner of the Division, to whom all such cases should be reported for final orders, that the offender did wilfully conceal or make away with his property at the

time of the original distress for the realization of the fine, or that he has since come into the possession of property under such circumstances that, notwithstanding the fact that he has undergone the alternative sentence, the interests of justice and policy demand that he should be called upon to make good the amount of the fine. [O. R. XX & XXI.]

In such case the proceedings will be taken up again; and if any further portion of the fine be realized, it will be entered in the original memo. Form A; and when no more is realizable, the Magistrate will make a note to that effect in the column of Remarks, and the case will be once more consigned to the records, and a note also made in the Nazir's Registry of the amount realized, with the date thereof. [O. R. XXII.]

If the fine or any portion of it be reported incapable of realization by the Police Officer entrusted with the execution of the warrant, the Magistrate who passed the sentence will make an entry in the column of Remarks on memo. Form A, and consign the case to the records; a similar entry should be made in the Fine Statement and the Register of Fines. [O. R. XXIII.]

Without the full realization of the fine being entered in memo. Form A, or without the entry signed by the Magistrate declaring the fine or any portion of it incapable of realization, the record-keeper is strictly forbidden to receive the record of any case. [O. R. XXIV.]

The record-keeper is also strictly forbidden to receive any case in which a term of imprisonment has been awarded in default of a payment of a fine, unless on the fine or any portion of it being realized, the memo. Form B, certified by the Superintendent of the Jail, is in the record of the case. [O. R. XXV.]

Whenever a person is sentenced to imprisonment and to pay a fine, and an additional term of imprisonment is awarded in default of payment of the fine, in column 10 of the Form of Warrant prescribed by Book Circular No. XIV of 1870, the alternative date of release will be entered; the one showing the date of release if the fine be paid, and the other the date of release if the fine be not paid. [O. R. X.]

In case of the fine or any portion of it being realized, the Nazir, on receipt of the fine or any portion of it, will give intimation of the fact to the Court Munshi concerned, who will prepare a memo. in the accompanying Form B, for the signature of the Magistrate. This memo., after being signed by the Magistrate, will be forwarded to the Superintendent of the Jail, who will note on the original warrant the No. and date of this memo., also the date on which the alteration is made on the original warrant, and will, after signing the certificate at foot, return the memo. to the Magistrate, who will file it on the record of the case. [O. R. XI.]

In cases decided by Honorary Assistant Commissioners, if the fine or any portion of it be realized before the transmission of the file to the Deputy Commissioner's office, the Police officer realizing.

Fines imposed in appealable cases should, on realization, be credited at once to Revenue, subject to refund on the mere certificate of the Appellate Court: the certificate should be in the new Form No. 112. [O. R. XXVI.]

This form is also prescribed for the Panjab. (*C. O.* 5, 1804 *of* 1872).

Officers should indent on the Superintendent of Government Press for Forms A. and B. which have been brought on the list of sanctioned forms as Nos. 111 and 130b, and will be reprinted both in English and in the Vernacular. [O. R. XXVII.]

Fines may be paid *in the Central Provinces* at a tehseel in Court, through the Court Inspector, or through the Jail Darogah. In very special cases the Magistrate may allow fines to be paid by instalments not extending beyond a period of six months, but this power should be sparingly and discreetly used.

In the Central Provinces, it is the duty of the departmental clerk to obtain orders from time to time for the realization of outstanding fines.

When fine has not been realized, and the fact certified by the Court Inspector, the Subordinate Magistrate should be ordered to ascertain the moveable property of the offender, and to attach the same.

In the Panajb, when the fine is not realizable, the Police must return the "writ" to the Court Inspector, or Subordinate Magistrate, with an endorsement that the writ was presented to the parties concerned, and cannot be realized; this endorsement should be attested by the lambardar or putwaree of the offender's village.

All fines to be paid into the Treasury by the Court Inspector on the date of receipt; if holidays prevent this, the money must be paid into the Sudder Police-station.

Separate receipts will not be granted for each fine, but one for all moneys paid in during the day. The Court Inspector must enter the serial number of the receipt for the day's payments, or the serial number of the receipt opposite each fine.

The Court Inspector or one of his deputies must attend at the Sudder Police-station to receive fines, &c., and grant receipts if the Sudder Courts are closed.

Officers in charge of rural stations are ordered to send in a monthly return of the fines realized, how much was sent to Court Inspector, and how much to Tehseel Treasuries. When a writ is received, it is to be mentioned in the diary, and so when disposed of. The diary for the last day in the month to give the return.

Fines on the subjects of a Native State, or on the State itself, can only be levied by the Political Dept. (Jud. Com., Punj. R., 25, 1862—1869.)

In Oudh, the District Superintendent is to arrange with Magistrate of the District that fines paid into Court shall not go into the Court head constable's hands but be paid at once to the proper official. (Pol. Cir XIV of 1870.)

Universal.—No fine to be struck off without the express order of the Court.

The Court has no power to dispose of fines inflicted upon prisoners; such power exists in Government alone. (Hyde's Rep., 282.)

A Deputy Magistrate has no authority to order arrears of municipal tax due by a person to be paid out of a fine levied on him. (Queen *v.* Brojo Kishore Dutt, W. R., Cr., VIII, 17; Goluck Dass, 1 Hyde's Rep., 282.)

The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor; but the Court which levies the fine must be the same as the Court which imposed it. (Modhoosoodun Roy, W. R., IX, 50.)

Payment of fine in compensation.

308. Whenever a Criminal Court* imposes a fine under any law in force for the time being, or confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms a part, the Court

* S. 4.

may order the whole or any part of the fine to be paid in compensation,

(1) for expenses properly incurred in the prosecution,

(2) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

A fine realized before the expiry of the term mentioned in paragraph 5, should be kept in deposit until such period as the order of the Appellate Court has been received.

The Court of first instance should let the Appellate Court know that it has given an order for compensation, so that the Appellate Court may, if it think necessary, direct that payment be suspended for a further period. (S. W. R., VI, C. L., 4.)

Even in sentences from which no appeal lies, the money should be kept in deposit for two months in case the order should be revised by the High Court. Should compensation have been paid by mistake, there is no legal provision for compelling the recipient to refund it, supposing the award is reversed. (S. W. R., C. L., VI, 4.)

Where a special or local law makes any provision as to the disposition of a fine imposed under it, the provisions of that law should be first consulted, and, if necessary, any portion that may remain over and above can be allotted in accordance with the principles laid down here. These instances, however, are very rare.

In making such compensation the Court should, in its finding, distinctly state the reasons for such award, and the way in which the amount of the award has been calculated; and should there be more than one person to whom the award is to be made, the amount that is to be paid to each such person. (S. W. R., IV, C. L., 4; II, 58; IX, 58; Agra S. N. A. Cir. Ord. 4, 1864.)

Officers are bound to carry out the provisions of this section, and to give suitable compensation in all fit cases when a fine can be realized. This section carefully preserved would greatly tend to popularize our criminal administration. Magistrates are, therefore, to record in their judgments the reasons which actuate them when they impose a fine, and do not carry out the provisions of this section. (Oudh Jud. Com.)

The provisions of s. 31, Act VII of 1870, should be remembered in making these awards:—

"Whenever an application or petition containing a complaint or charge of a non-cognizable offence (or where a Court has before it, on examination for the first time, a complainant complaining of wrongful restraint, wrongful confinement, or of a non-cognizable offence), is presented to a Criminal Court, the Court, if it convict the accused persons, shall, in addition to the penalty imposed upon, order him to repay to the complainant the fee paid on such application or petition (or for such examination). * * * * *

"When the complainant has paid fees for serving processes in either of the above cases, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

The above fees may be recovered as if they were fines imposed by the Court."

Under the first head of compensation would fall pleader's fees. Care should be taken by the Court in awarding such, and as a rule not more should be allowed than were really necessary, the circumstances and gravity of the offence under complaint being duly considered, also the fact whether the defendant was defended or undefended, and how and by whom he was defended: costs of procuring documents, or copies of documents, are often expenses properly incurred in a suit.

The question whether an offence is one that can be compensated or not is one left for the opinion of the Court before whom the case is brought either in the first instance on appeal or on revision. A few suggestions on this head are offered below for the aid of beginners.

In certain cases no doubt can occur, where a blow has been struck by a rich man, and the sufferer is a common day-laborer who has in consequence been deprived of the power of pursuing his ordinary avocations, and for a specified time has lost or is likely to lose his daily wages; the amount of loss thus incurred by him is easily ascertained, and as easily awarded from the fine.

In theft, criminal misappropriation, and extortion, the value of the stolen property can, as a rule, be easily appraised, and the compensation be commensurate with the loss experienced.

On the other hand, in many cases of defamation, assault, offences against the State, army and navy, public tranquility, and the like, it is not possible to measure the injury done by a money standard. In injuries done to honor, it is far better to refer the complainant for pecuniary satisfaction to a Civil Court. The same may be said of awarding compensation for offences under Chapter XX, Penal Code. To assess such injuries is "a true relic of the barbarous times," * and leads to more evil than good.

* Bentham.

In calculations like the above, there remain other points to be considered, such as satisfaction for what may be considered the necessary *sequela* of an injury done; a thief may make away with property which, if assessed by an ordinary person, would not be worth 8 annas, but which from its relation to other property of the real owner, or the necessity he has for its daily use, or the difficulty of replacing it, or many other causes does possess, and can be assessed at ten fold, thirty-fold, or a hundred-fold its intrinsic value. The Court should here, as far as possible, be guided in its award by the relative, and not the intrinsic, value.

In cases of doubt it is always better to err on the side of excess in the amount of the award, as an under-estimated award always leaves a

loss with the party injured, who, when possible, should always receive as full satisfaction as can be given.

It should be carefully borne in mind that the duty of the Court is first to punish, and out of the sum fixed as punishment to award compensation; it will not do to invert this order, and first consider what satisfaction is due to the injured person. The thought of satisfaction to society at large should not be made subordinate and subservient to satisfaction for the injured individual; it is obviously useless to impose a fine which it is evidently beyond the ability of the person fined to pay. (Agra S. N. A. Cir. Ord. 9, 1862; J. C., Punj., 131 of 1862; C. P. IV, 1863.)

Compensation awarded under this section should not be confounded with compensation awarded under s. 209 to a person against whom a frivolous or vexatious complaint has been brought.

The Judicial Commissioner, Oudh, in a circular dated 21st May 1869, approves of money compensation being awarded in a case of rape, and says:—If a young child be raped, and the injury sustained by her such that she required medical attendance, the Magistrate can award compensation to the amount of the doctor's fees, and also compensation for any detriment to her matrimonial prospects which may have been occasioned by the crime. He can take the way in which the child's future has been affected by the crime into consideration; and can direct that the sum awarded shall be paid to the father of the child, or whoever may appear in her behalf, for his own benefit, or for that of the child, or of both,—that is to say, the Court may direct that the money shall be paid to the father absolutely, in consideration of the additional expense which, by reason of the offence, he will incur in getting the child married. Or it may direct that the money be held in deposit to be paid to the child on her coming of age or marrying. Or it may direct that a portion be paid to the father, and the rest to the child, or cause the payment to be paid for the benefit of both in whatever manner it may deem fit.

Imprisonment in default of payment of fine.

* S. 15, n.

309. In every case punishable, under any law in force for the time being, with imprisonment* as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts† shall be guided by the provisions of sections sixty-four and sixty-five of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine:

† S. 4.

‡ S. 6, n.

Proviso as to cases decided by a Magistrate.

Provided that, in no case decided by a Magistrate,‡ where imprisonment* shall have been awarded as part of the substantive sentence, shall the period of imprisonment, awarded in default of payment of the fine, exceed one-fourth of the period of imprisonment which such Magistrate is compe-

tent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Where a person is sentenced to fine only, the Magistrate* may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's† powers under this Act.

* S. 15, n.

† S. 21, &c.

The provisions of ss. 64 and 65 are as follows:—

64. In every case, in which an offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment, as well as fine.

The notes on s. 15 and s. 307 should also be consulted.

The Calcutta Court, 59 and 326, 1862, have held it illegal to fix a time within which a sentence of fine shall be paid in all cases in which a person is sentenced to imprisonment in default of payment of fine; if the fine be paid, immediate information should be given to the Officer in charge of the Jail, so that the prisoner be not kept in illegal confinement. (C. 1060 T. of 1864 for Bengal Magistrates and Sub-divisional Magistrates.)

Whipping, if awarded in addition to imprisonment, when to be inflicted.

310. When the punishment of whipping is awarded in addition to imprisonment,‡ by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or, if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Appellate Court confirming the sentence.

‡ Act VI of 1864, ss. 3, 4.

By Agra S. N. A. 9 of 1865, offenders over 15 years of age (juvenile offenders are to be removed instantly to a Central Jail), under sentence of whipping, are not to be removed from the Districts to the Central Jail until such sentence has been carried into execution, or annulled or commuted as the case may be; and by 8 of 1866, it is further added that whipping, prescribed to be carried into effect after 15 days, must be inflicted immediately on the expiration of that period, and cannot be legally given afterwards.

Whipping under s. 4, Act VI of 1864, can only be inflicted in addition to other punishment on a second conviction of the offences specified therein, when the first offence was committed some time previous to the second conviction, though after the passing of the Indian Penal Code. (Uday Patnaick, W. R., XII, 68.)

Mode of inflicting the punishment.

311. In the case of a person of or over sixteen years of age, the punishment of whipping shall be inflicted with such instrument, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school discipline with a light ratan.

In no case, if the cat-o'-nine-tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or, if the ratan be employed, shall the punishment exceed thirty stripes.

The punishment shall be inflicted in the presence of a Magistrate, and also, unless the Court which passed the sentence otherwise orders, in the presence of a Medical Officer.

(*a*). Both in the Central Provinces and North-West Provinces, repeated injunctions have been issued to exercise cautiously in the case of adults the discretionary power of substituting a whipping for other kinds of punishment; the object of this section is to enable Magistrates to deal effectually with reckless offenders or persons belonging to habitually criminal classes who are too poor to pay a fine, are not deterred from crime by a short imprisonment, and needlessly crowd the jails.

It was not intended to supply the means of inflicting a specially degrading penalty on men whose case is sufficiently met by fine or imprisonment.

A punishment which, to certain classes of the community, carries such disgrace with it, should not be inflicted when there are special circumstances which render it undesirable or make it in reality a greater punishment than the law intends. More especially should this be borne in mind in cases where it is proposed to inflict this as the sole punishment, and where, consequently, there is no appeal. (N. W. P., G. C., 667A of 1867; Cen. Pro. Book Cir. 25 of 1867.)

(*b*). In Bengal, whipping is to be inflicted on the breech with a ratan not exceeding half an inch in diameter. (No. 1239 of 1864.)

In the North-Western Provinces (Not. No. 88A, Judicial, 21st March, 1864), the Lieutenant-Governor directs that the ratan with which whipping is inflicted shall be at least 4, and not more than 4½, feet in length, and from 1 to 1½ inches in circumference.

Where practicable, a Medical Officer should be present at the time of its infliction; failing this, a medical certificate should be obtained of the culprit being in a fit state of health to undergo the punishment. This is done by sending the offender for the Civil Surgeon's inspection as soon as sentence has been passed.

Entertainment by Magistrates of a special servant for carrying out the punishment of flogging disallowed, and the duty directed to be delegated to some chuprassee or khulassee on the regular establishment, by Government Order, dated 2nd March, 1865.

Both the Panjab and North-Western Provinces are urgent on the expediency of whipping juvenile offenders instead of sending them to prison.

To imprison a boy for a few weeks in a jail, where he must of necessity become the associate of thieves and other offenders, is an almost certain means of ruining his moral character. In the absence of Reformatories, or of adequate arrangement in District Jails for the treatment of juvenile offenders, the construction of which in these Provinces has been negatived by the Government of India, the best course to adopt with boys convicted of any of the lighter offences, is to whip and release them. (G. O., N. W. P., 353A of 1869; Panjab Book Cir. XVI of 1871.)

In the N. W. P., whenever a Magistrate sentences a juvenile offender to imprisonment instead of whipping, he is bound to state the reason for so doing, and to send a copy of his reasons, together with the warrant, to the Superintendent of the Jail. Special reasons will occur at times, such as the health of the offender or the peculiar nature of the crime, &c. (N. W. P. Cir. Order 44A and 46A of 1870.)

In the case of adults on a first conviction, or in the case of juvenine offenders, whether for a first offence or otherwise, whipping can only be *in lieu of* any other punishment. (Abdool Khitmutgar, W. R., 1864, 38.)

Whipping cannot be added to a sentence of imprisonment in the case of a first conviction for the offence under punishment. (Kantiram and Mecken, I W. R., 24; Tonaokoch, II, 63; Amarut Sheikh, IV, 20.)

Punishment not to be inflicted if offender not in fit state of health.

312. No sentence of whipping shall be carried into execution unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate present, that the offender is in a fit state of health to undergo the punishment.

Stay of execution.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate present, that the offender is not in a fit state of health to undergo the remainder of the punishment, the whipping shall be finally stopped.

Not to be executed by instalments.

No sentence of whipping shall be executed by instalments.

Corporal punishment may be inflicted in the presence of a Magistrate and a Native Doctor; but whenever it may be at all doubtful whether the offender is in a fit state of health to undergo it, a European Medical Officer, if there be one in the station, should be made to attend. A Magistrate cannot order any one who is not a Magistrate to take his place during the infliction of a whipping. (Oudh Book Cir. IX of 1870.)

Procedure if punishment cannot be inflicted under the last section.

*313. In any case in which, under section three hundred and twelve, a sentence of whipping is, wholly or partially, prevented from being carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either order the discharge of such offender, or sentence him, in lieu of whipping, or in lieu of so much of the sentence of whipping as was not carried out, to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment to which such offender is sentenced shall not exceed that to which he is liable by law, or that which the said Court is competent to award.

Sentence in cases of simultaneous conviction of several offences.

* S. 4.

314. When a person is convicted (*a*) at one trial* of two or more offences punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments (*b*), which such Court is competent to inflict (*c*); such penalties, when consisting of imprisonment† or transportation,† to commence the one after the expiration of the other.

† S. 15.

(*a*). The provisions of ss. 453, 457, and 460 should be consulted, as they direct when a Court may charge an offender with more than one offence.

(*b*). Under the corresponding section (s. 46) in the old Code, the Calcutta High Court had ruled that whipping could not be awarded as one of two penalties, and rightly so, for the old section expressly states that the two penalties could only be "penalties prescribed by the Penal Code;" the wording of the section as it now stands has virtually reversed the above decision. It should, however, be carefully borne in mind that

in *no case* can more than thirty stripes with a ratan be ordered, hence two sentences of whipping, the aggregate of which exceeded thirty stripes, would be illegal. *Vide* s. 311.

The provisions of s. 59, Penal Code, by which imprisonment of seven years or more can be commuted to transportation, applied originally to such sentence only as is given for one offence, not to two sentences of less than seven years each merged together into one under this section (for further remarks and rulings, see s. 15). The Oudh Judicial Commissioner holds that this section reversed the above rulings, and also adheres to his former directions that, when a person who has not been previously convicted is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others. But it is not illegal to sentence him to whipping in lieu of all other punishments.

(*c*). The Calcutta and Agra Courts (Nagardi Paramanik, I B. L. R., A. Cr., 5, and S. N. A. Cir. Ord. II., 1863) have directed Magistrates and Judges always to pass separate sentences for each particular offence of which a prisoner may be found guilty, so that in case any one of the charges broke down on appeal, the amount of the punishment to be remitted might be known. Similar rulings were given in Bombay. (Murar Trikand, Crown Cases, V, 3; Kuayah Trimbak, II, 414.)

Opposite opinions were given in Meelan Khalifa, S. W. R., I, 7; Hara, S. N. A., Agra, 1865, 105; C. H. C. Cir. Ord. 16, 1864; II W. R., C. L., 9; J. C., Oudh, Cir. Ord. 66, 1864. In these it was laid down that, where one portion of the facts in evidence constitute one offence, and another portion a second distinct offence, then a substantial punishment should be given for the graver sentence, and a light one or none on the second offence. In W. R., C. L., 2, it was held that an accused person should always be found guilty of the offence covered by the greater portion of the facts in evidence.

For appeal from punishment under this section, see s. 273. For punishment given to two separate offences, and enhanced punishment for subsequent convictions, see the Whipping Act, and s. 59, Penal Code, and s. 315.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that in no case shall such person be sentenced to imprisonment* for a longer period than fourteen years:

Maximum term of imprisonment.

* S. 15.

Provided† also that, if the case be tried by a Magistrate (other than a Magistrate acting under section thirty-six) the punishment shall not in the aggregate exceed twice the amount of punishment which he is by his ordinary (*d*) jurisdiction‡ competent to inflict.

† S. 6, n.

‡ S. 20.

(*d*). Deputy Commissioners specially empowered under s. 36, can *never* pass a sentence exceeding seven years, for the extent of punishment under this section can never exceed twice their *ordinary* power as Magistrates.

Trial of previously convicted persons.

315. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate considers him an habitual offender, be committed to the Court of Session:

Proviso.

Provided that, in Districts in which the Magistrate* of the District has been invested with powers under section thirty-six, the accused person may be placed on his trial before such Magistrate of the District.

* S. 35.

Chapter XII of the Penal Code is on offences relating to coin and Government stamps; Chapter XVII on offences against property.

The only sections that do not fall under this head are ss. 241, 254, 262, 385, 403, 417 (421—424), (426—428), 434, 447, 448, 451 (1st head), 453, 461. A man convicted of any one of these, and again convicted of an offence under one of the other sections, or *vice versâ*, could not be dealt with under this section. But a man convicted, say under s. 246, and on a second occasion under s. 379, would.

Punishable only, not actually "punished with."

For registers, to enable one to lay one's hand on a previous conviction, see note to s. 302.

Section 36 refers to powers with which Deputy Commissioners, &c., may be invested. See notes thereon.

The Oudh Commissioner has directed that the sentence passed on a second coviction should, in some measure, depend upon the nature of the former crime. Magistrates are, therefore, to use discretion in making commitments on a second conviction.

Currency of sentence on escaped convicts.

316. When sentence is passed on an escaped convict for such escape or for any other offence, the Court may direct the sentence to take effect immediately, or after such convict has suffered imprisonment† or transportation,† as the case may be, for a further period, equal to that which remained unexpired of his former sentence at the time of his escape.

† S. 15.

This section does not apply to persons not convicts escaping from detention pending trial. (No. 480 of 1864.)

Central Provinces Book Circular XIV of 1864 directs that, on receipt of intimation that any escaped convict has been recaptured, notice will be sent to each District Superintendent, in order that his name may be expunged from the list kept in the District Superintendent's office and at each Police post. In the same way, when the report of any convict having escaped reaches the Local Government, a memorandum of his name and other particulars will be sent to each District Superintendent, that an entry may be made in his own office and at each Police post in the list of the district from which the convict has escaped.

Sentence on offender already sentenced for another offence.

317. When sentence is passed on a person already under sentence of imprisonment* or transportation,* and the sentence is for imprisonment* or transportation,* the Court shall direct that such imprisonment* or transportation* shall commence at the expiration of the imprisonment* or transportation* to which such person has been previously sentenced; * S. 15.

or, if he is undergoing a sentence of imprisonment,* and the sentence, on such subsequent conviction, be for transportation,* the Court may direct that the sentence shall commence immediately, or at the expiration of the imprisonment* to which such person has been previously sentenced:

Proviso.

Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

Where a Magistrate through error dated a sentence on a person already under sentence from the date on which he gave sentence, the High Court (W. R., III, C. L., 16) held that this was only a clerical error, and could be corrected by the Magistrate himself.

When such prisoner is sent up for a second trial, the original warrant should accompany him, and an endorsement on it should show how much of the original sentence had been worked out. (Bom. Reg. XIII, 1827, s. 15, cl. 2.)

Confinement of youthful offenders in reformatories.

318. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, such Court may

direct that such offender, instead of being imprisoned in the criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed by Government.

In Bengal and Oudh the following directions have been issued (Oudh Pol. Cir. 10—3 of 1872, and Ben. Cir. 10 of 1872):—

If, on the conviction of a juvenile criminal, it appeared to the Magistrate trying him that the offender has been living by crime, consorting with bad characters, and is or is likely to become a professional criminal, he shall report the case to the Magistrate of the District. The Magistrate of the District shall then order that the offender's mode of life after release be made the subject of observation. In large towns the only agency available for purposes of supervision will probably be the Police; but among the rural population, besides supervision by the Police, the landholders might very properly be instructed to report the movements of juveniles as of any other class of criminals.

All juvenile convicts, whether punished by whipping or imprisonment, and whether classed as professional criminals or not, will, on release, be escorted to their homes by the Police, and be given up to their relations in presence of two respectable residents of the neighbourhood in which they live.

Officers in charge of jails must be instructed to send notice to the District Superintendent on the day previous to the release of any juvenile offender. In the case of convicts punished by whipping, the convicting Magistrate will issue instructions through the Court Inspector.

The name of offenders regarding whom the District Magistrate orders periodical inquiry, should be entered in Part I of the Register of Released Convicts kept up at Police stations, and the Magistrate should insist upon regular report, and satisfy himself that the inquiry ordered is made judiciously and thoroughly.

The subsistence allowance granted to released convicts will, in the case of juvenile offenders, be made over to the policeman who escorts them to their home.

The report of the Police officer who actually made over charge, should be forwarded to the Superintendent of Police of the district from which the released offender was despatched; the latter will then return the warrant of release to the Superintendent of the Jail concerned.

Before despatching such juvenile offenders, the Superintendent of Police will personally satisfy himself that a sufficient subsistence allowance has been supplied by the Jail authorities. (Pol. Cir., N. W. P., 11, 1871; and Oudh, 34-18 of 1871, Pol. Cir. Ord.)

Governor-General in Council to appoint places to which persons sentenced to transportation may be sent.

Local Government to direct removal of such persons to places appointed.

319. The Governor-General of India in Council may from time to time appoint a place or places within British India* to which persons sentenced to transportation† shall be sent: the Local Government, or some officer duly authorized by such Government, shall give orders for the removal of such persons to the place or places so appointed; and no sentence of transportation shall specify the place to which the person sentenced is to be transported.

* S. 1, n. (*a*).

† S. 15, n. (*b*).

The power of a Local Government under this section have been given to the Chief Commissioners of Oudh. (G. I. H. D., 3828, 23rd August 1867; Central Provinces, *ibid*, 49, dated 10th January 1868; and Punjab.)

By Notification 153 of 1870, all Central Jails in Bengal for Lower Bengal, and by Notification No. 248 of 1869, the Central Jails at Jubbulpore and Nagpore, have been appointed as places to which persons sentenced to transportation in the Central Provinces are to be sent.

Notification of the Government of India, Financial Department, No. 1644, dated 28th October 1869, appoints the Central Jails at Benares, Allahabad, Agra, Furruckabad, Bareilly, and Meerut as places to which persons sentenced to transportation may be sent.

No convicts are now sent to the Andamans, save those transported for life. By Circular Order XIII of 1864, North-West Provinces, convicts sentenced to transportation beyond the seas are to be forwarded to the nearest Central Prison immediately after sentence, and there detained for ninety days from the date of sentence, in order to allow full time for the preferment of appeals and the revision of trials by the Court; and in Government Order 232A, of the same year, the Hon'ble the Lieutenant-Governor requests that the High Court will, if an appeal has been filed, and if they have reasons to believe that final orders will not issue before the lapse of ninety days from date of original sentence, inform the Inspector-General of Prisons that an appeal is pending, so as to enable him to detain the prisoners pending final orders in their case.

Convicts sent beyond seas should be sent with as complete a history as possible of their antecedents. (Punj. Pol. Cir. XIX of 1872.) The particulars of the offence for which each of them is transported should also be furnished in order that the officials at the Andamans may have some clue to the general character of the man, and some more detailed indication of his crime than is at present furnished by simply quoting in the warrant the section of the Penal Code under which the conviction has taken place.

In the North-West, convicts are, prior to transportation, examined by a committee consisting of the Magistrate or Joint Magistrate and Superintendent of the Central Jail, and of the Senior Assistant Magistrate, when the Magistrate or Joint Magistrate may be unable to serve. (C. O. 50A of 1869, N. W. P.)

As a general rule no man over 45 years of age should be passed, unless

he be very strong and well-liking. The proceedings of the committee are submitted for approval to Local Government, by whom the final order is passed. Without this order, no convict is ever transported. For rules regarding the transmission of convicts, see Appendix.

A child of convict parents, both of whom are sentenced to transportation for life, should not be sent to the Andamans, but provided for if possible elsewhere. See No. 1280A of 1864, North-West Provinces, General Department.

* S. 15, n. (*b*).

Persons sentenced to transportation while undergoing transportation under previous sentence need not be removed.

320. When sentence of transportation* is passed on a person already undergoing transportation under a sentence previously passed for another offence, it shall not be necessary for the Local Government to order his removal from the place in which he is so undergoing transportation.

Sentence of death.

321. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

All capital sentences should be referred at once under s. 271 to the High Court for confirmation. The Judge should also fix the time and place for carrying out the sentence of death, and give order for the disposal of the corpse.

Power to remit punishment.

322. When any person has been sentenced to punishment for an offence, the Governor-General of India in Council, or the Local Government, may, at any time, without conditions, or upon any conditions which the person sentenced accepts, remit the whole or any part of the punishment to which he has been sentenced.

If the person to whom a pardon has been given fails to fulfil the conditions prescribed by the Governor-General of India in Council, or the Local Government, the Governor-General of India in Council or the Local Government, as the case may be, may withdraw such pardon, whereupon such person shall be remanded to undergo the unexpired portion of his sentence.

Power to commute punishment.

The Governor-General of India in Council, or the Local Government, may also, without the consent of the person sentenced, in substitution for the sentence passed according to law, commute any one of the following sentences for any other mentioned after it—

death,* transportation,* penal servitude,* imprisonment.* * S. 15, n.

The High Court should act under this section when they consider that there is any extra-judicial reason for interference with a sentence. (Bissonath Mitter, S. W. R., VI, 6; Sajawpa, VII, 64; Agra, Kanhya, 1862, 109.)

This is the only course that can be adopted where, after regular conviction, extraneous evidence, exculpatory of the offence, comes to light. (G. Hart, S. W. R., VI, 42.)

Grant of pardon or remission of the whole or any portion of the punishment awarded for any crime or offence committed within the territories under the Lieutenant-Governor, North-Western Provinces, in all cases tried by the High Court in Calcutta in its original jurisdiction, to be exercised by the Governor-General in Council alone, by Government Order dated 27th November 1863.

This section will be found of use when a man knows more than he pretends to know, and refuses to make a clear full confession.

A Magistrate having promised a prisoner under sentence to make a representation to Government soliciting his release, conditionally on the performance by him of a certain duty, Circular 6A of 1866 reminds all Magistrates that no Magistrate has the right to bind Government to a remission of sentence in such cases, as he virtually does by promising representation in his favor, without authority specially obtained beforehand.

Statements of recommendation for remission of sentence should be prepared by Jail Superintendents after consultation with Police Superintendents; on such statements should always be recorded any previous convictions or information as to the offender being a professional or habitual offender. (Punj. Cir. Memo. 2336 of 1870.)

Notes by Select Committee on Chap. XXIV.

In Chapter XXIV, s. 328, we have provided that, in cases where, without objection on the part of the accused, evidence has been taken partly by one Magistrate, and partly by another, the conviction may, if the accused person has not been prejudiced, be upheld.

In s. 327, we have provided that, in the case of accused persons who abscond, any competent Court may record the statements of persons acquainted with the facts of the case, and that such statements shall subseqently be available for the purpose of the trial.

Commitments made on evidence, partly recorded by one officer, and partly by another, will, in every case, be sustainable.

We have provided for the issue of a Commission by the High Court or Court of Session for the purpose of taking evidence in cases in which serious inconvenience would result from requiring the personal attendance of the witness.

PART VIII.

EVIDENCE.

CHAPTER XXIV.—ss. 323—330.

SPECIAL RULES OF EVIDENCE IN CRIMINAL CASES.

Evidence of medical witness.

323. The examination of a Civil Surgeon or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial, although the person examined is not called as a witness.

Court may summon medical witness.

The Court may summon such Civil Surgeon or other medical witness, if it sees sufficient cause for doing so.

The following memorandum made originally for the Punjab is also applicable to the Central Provinces and to Oudh. See Book Circular IV of 1864:—

(1) Demi-official reports or letters are not an examination under this section.

(2) When a case arises requiring medical opinion, the District Superintendent of Police or his subordinates should forward the subject to the Civil Surgeon, with such a general description of what is known of the case that the attention of the medical officer may be turned in the right direction. This may be in English or vernacular as the case may be.

(3) The Civil Surgeon will reply by letter or memo. on the back of the reference of the Police Officer, or, at any rate, attach his reply to the paper received from the Police, that there may be no doubt of the case to which his remarks apply.

(4) Where there is a Civil Surgeon, or Sub-Assistant Civil Surgeon, with a knowledge of the English language, it is his duty to correspond with the Chemical Examiner (whose report will be addressed to him), and he will forward it after perusal to the District Superintendent of Police. In other cases the District Superintendent of Police must address the Chemical Examiner direct.

(5) A form of report has been supplied to the Chemical Examiner.

(6) The Police-officer, having received the reply of the Civil Surgeon, will send up the case according to rule to the Magistrate. Among the witnesses will appear the name of the Civil Surgeon.

(7) The Magistrate should look into the case, and make himself acquainted with its particular features, before the Civil Surgeon enters the Court, in order that the proper questions may be asked.

(8) Before the Civil Surgeon or other medical officer leaves the Court, his deposition is to be translated and read over to the accused, who is to be allowed to cross-examine, and that he has had the opportunity of so doing should appear on the deposition. The translation is to be part of the record.

(9) The letter of the Chemical Examiner should be attached to the deposition of the Civil Surgeon, and be alluded to in the deposition.

(10) No letters, with the exception of that of the Chemical Examiner, are to appear on the judicial record of a case; the original reply of the Civil Surgeon will remain with the Police file, and the only use of it will be to refresh the memory of the Civil Surgeon at the time of giving his deposition, and to assist the Judicial Officer in framing his queries. It cannot be admitted as evidence, nor is it sufficient to read it over to the Civil Surgeon, and swear him to the truth of it; his deposition must be recorded *de novo* and in full in the presence of the accused.

(11) If in any particular case the evidence of a medical witness is not to be had, the details, such as fact of death, symptoms, appearances, wounds, must be made out as correctly as possible from the evidence of non-professional eye-witnesses. The Court cannot assume any such facts from mere reports not admissible as evidence, and it is of no use proceeding in the trial until the *corpus delicti* is made out. Police officers can always be put into the witness-box to bear testimony to what they saw.

All the above are applicable to Oudh; the following are also in force there:—

In some cases a written statement is enough for the ends of justice; and when it certainly is so, it is unnecessary to take the doctor's evidence as a mere matter of form in repetition of independent testimony, *e. g.*, when it is certified and palpable, as well as proved in evidence, that a man died from a severe sword-cut, or gun-shot wound, and the defence in no way turns on that point, nor is it in any way disputed or open to doubt, the formal evidence of the doctor may be omitted, though the usual certificate should be filed.

But whenever there is any possible doubt of the cause of death, or the circumstances of the crime may, in any way, depend on the nature of the injury, then the doctor should be summoned as a witness, and very particularly examined by the Magistrate for the *bonâ fide* information of the Court Great care must be taken that, under the above instructions, the medical evidence is not omitted where it may possibly have any bearing on the case. And in all particularly important or difficult cases, it is well to examine the doctor, in order to be sure of the negative information that there is no other possible cause of injury, besides the palpable one reported in the first instance.

The deposition of the Civil Surgeon is to be recorded on the lithographed forms of which a copy has been supplied for the deposition of European British subjects. He is to be sworn on the New Testament, if a Christian; and, if a native, the solemn affirmation is to be administered. He is to sign his deposition with his official title. The evidence of Native Doctors must be taken like that of any other witness.

With the view of assisting Magistrates in the task, sometimes a difficult one, of asking suitable questions, a list of questions which suggest themselves in each class of cases is appended, to which the Magistrate can refer at the time of the examination. See Appendix, "Chemical Examiner."

As regards cases committed to the Commissioner of Division when no evidence is elicited from the doctor beyond the palpable and patent fact of the injury, it is unnecessary to send the doctor as a witness, his examination before the Magistrate being good evidence as far as it goes. But if the medical evidence materially affects the case, the doctor should be sent as a witness before the Commissioner, whenever this can be done without great injury to the public service; and there are some important cases depending upon minute medical evidence, in which it is essential that the Judge should have the opportunity of examining the doctor, and in which therefore he must be sent as a witness regardless of all other considerations.

The substance of the report of a Subordinate Medical Officer, with an expression of concurrence by the Civil Surgeon, cannot be received in evidence under this section. (Chyntamonee Nye, W. R., XI, 2.)

Medical Officers must always keep certificates of examination, and should enter them in a book. (N. W. P., 338A of 1865.)

Magistrates should invariably record the evidence of the Medical Officer, before committing to the Court of Session a case of an offence affecting the human body; the omission might very possibly lead to the acquittal of an accused person in the Sessions Court, if through sickness, death, or unavoidable absence of the Medical Officer, his attendance cannot be procured before that Court. (W. R., II, C. L., 6.)

Accused may be convicted on his own plea.

324. If an accused person admits the commission of an offence before a Court competent to try* him for such offence,† such Court may convict him on his own admission.

* S. 4.

† Sched. IV, col. 7.

See notes to s. 24, Act I of 1872, Appendix, "Evidence."

Report of Chemical Examiner.

325. Any document purporting to be a report from the Chemical Examiner, or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or

analysis and report in the course of any criminal trial, or in any preliminary inquiry relating thereto, may, if it bears his signature, be used as evidence* in any criminal trial.

* S. 4, n. (*d*).

Genuineness of signature may be presumed.

The Court may presume that the signature of any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

Especial attention is directed to the careful packing of substances in properly stoppered and secure vessels, in default of which they reach the Examiner in a state more or less useless for purposes of investigation.

There is apparent at times either neglect or disinclination on the part of the transmitting officer to give the Chemical Examiner all the information that may guide him to the correct analysis of the substance forwarded. It seems to be apprehended by some officers that such particulars might influence the judgment of the Chemical Examiner, whereas analysis rests on facts and ascertained phenomena, not on opinion; and in order to guide the Examiner, he should be furnished with the "fullest possible details regarding symptoms, and *post-mortem* appearances."

The necessity for these detailed reports in cases of suspected poisoning will be manifest when it is considered that the material requiring analysis is usually very small; and if no intimation be afforded by the symptoms it may have produced, some portion is necessarily expended in determining the class of poisonous agents to which it belongs, before any particular experiments can be undertaken to determine its individual nature. (C. O. W. P. 129, 1843; Jud. Com., Cen. Prov., 2947 of 1865.)

Reference to the Chemical Examiner should not be made by the Medical Officer, but always by the Judicial Officer. (G. C. IV, N. W. P., 22 of 1869. See also C. O. 19A of 1871.) The contrary is in force in Oudh, Central Provinces, and Panjab.

When the Civil Surgeon can give a decided opinion respecting a supposed blood-stain, his evidence should be taken. The Chemical Examiner should only be referred to when the former is unable to give a decided opinion on the point, and where such evidence is considered very desirable. (Agra S. N. A., 21 of 1865.)

Agra S. N. A. C. O. 11 of 1866 points out that, after receiving the Civil Surgeon's report, it rests entirely with the Magistrate whether reference should be made to the Chemical Examiner or no: when a Magistrate presses it, the Chemical Examiner must analyse a suspected substance, but both Magistrates and Medical Officers should not simply, because they are unable to explain the cause of death from a *post-mortem* examination, or because *post-mortem* appearances are incompatible with death by poisoning, send subjects for analysis. Should the

Magistrate think analysis necessary, he should prepare what report he can of the circumstances attending the death, and send it with the Civil Surgeon's report to the Chemical Examiner. The duty of preparing and despatching the subject sent for analysis devolves on the Medical Officer.

Such substances should be thus prepared (N. W. P., 63A of 1865; C. P. 291 of 1862, and Bengal):—

"The suspected substance should be, when practicable, enclosed in "a glass bottle fitted with a sound cork, or in a well-stoppered jar; "and the Medical Officer who makes the *post-mortem* examination "should see the cork tied down, and seal it with his own seal. An "impression of the seal should be sent to the Chemical Examiner in the "letter reporting the despatch of the parcel. It is desirable, especially "in the hot season, that matters liable to decomposition should be put "in spirit. The bottle should be enclosed in a thick layer of raw "collodion, and tightly packed into a tin case or box; the box itself "should be carefully packed and sealed. Every bottle or packet should "be carefully labelled, and the officer who despatches it should write "across the label (adding his signature) the nature of the contents, "and number and date of the letter reporting its dispatch."

"This letter, signed by the officer who has signed the label, and con-"taining the impression of the seal as above directed, should always be "sent separate from the parcel containing the suspected substances; "and it should contain, for the information and guidance of the Chemi-"cal Examiner, the fullest possible details regarding symptoms and *post-"mortem* appearances."

In the Central Provinces officers are directed to consult pp. 20, 21, 24, 25 of the pamphlet on poisons by the Chemical Examiner for the Panjab before submitting substances for chemical examination in case of suspected poisoning. (2947, dated 4th November 1865.)

The Chemical Examiner's report is only evidence if it bear that officer's signature; a copy of it authenticated by the Magistrate is not so. (Bishumber Das, S. W. R., XV, 50.)

If put in in evidence, the report should be read before the prisoner is called on for his defence, and should be filed with the proceedings of the trial. (Cal. H. Ct. C. O. XI. of 1867.)

Previous conviction or acquittal how proved.

326. Where a previous conviction or acquittal is to be proved against an accused person, application shall be made to the officer in whose custody the records of such trial may be. It shall not be necessary to produce the record of the conviction or acquittal of such accused person, or a copy thereof, but an extract may be produced in proof of such conviction or acquittal, if certified, under the hand of the Clerk of the Court or other officer having the custody of the

records of the Court in which such conviction or acquittal was had, or by the Deputy of such Clerk or officer, to be a copy of the charge,* finding† and sentence, as the case may be.

* S. 439.
† S. 461.

Previous convictions should always be noted on warrants of commitments to jails.

See Appendix, "Time-expired Convicts" and "Register of Previous Convictions."

Record of evidence in the absence of the accused.

327. If an accused person abscond, and after due pursuit cannot be arrested, any Court competent to try‡ or to commit§ such accused person for trial for the offence complained of, may, in his absence,‖ record the statements of the persons acquainted with the facts; and such depositions may, on the arrest of such person, be put in on his trial‡ for such offence, if it is not practicable to procure the attendance¶ of such witnesses.

‡ S. 4.
§ S. 143.
‖ S. 331, &c.
¶ S. 350.

By "not practicable" is meant a really sufficient cause for the non-attendance of a witness, like a moral or physical impossibility. It is not enough to plead as an excuse for the non-attendance of a Police officer that he is engaged on important duties; every reasonable effort should be made to procure a witness' attendance. Inquiries should be made, and evidence taken, as to whether a sufficient cause exists for his absence. Evidence on this point should be recorded in the same manner as evidence in any other part of the case. (Itwaree Dome, W. R., VI, 83; Bheekun Dass, W. R., VII, 114; III, C. L., 14.)

Another Criminal letter directs that this procedure should be exercised with great caution, and only under exceptional circumstances. The Judge must satisfy himself that the witness is either dead, or that for any *sufficient* cause his attendance *cannot* be procured. It is preferable to adjourn the trial of heinous offences to secure the personal attendance of any important witnesses who may have absented themselves. (W. R., I, C. L., 6.)

Convictions on evidence partly recorded by one Magistrate and partly by another.

328. Whenever any Magistrate, after having heard part of the evidence in a case, ceases to exercise jurisdiction in such case and is succeeded by another Magistrate who has and who exercises jurisdiction in such case, such last-named Magistrate may decide the case

CH. XXIV. §§ 328–330.

on the evidence* partly recorded by his predecessor and partly recorded by himself, or he may resummon† the witnesses and commence afresh:

* S. 4, n. (d).

† S. 250.

Provided that the accused person may, when the second Magistrate commences his proceedings, demand that the witnesses shall be resummoned† and reheard,‡ in which case the trial§ shall be commenced afresh:

‡ S. 331.
§ S. 4.

Provided also that any Court of Appeal‖ or Revision,¶ before which the case may be brought,

‖ S. 266, &c.
¶ S. 292, &c.

or, in cases tried by Magistrates** subordinate to the Magistrate†† of the District, the Magistrate of the District, without appeal,

** S. 37.
†† S. 35.

may set aside any conviction,‡‡ passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or Magistrate is of opinion that the accused person has been materially prejudiced thereby; and may order a new trial.

‡‡ S. 220.

Commitments on evidence partly recorded by one officer and partly by another, valid.

329. Whenever, from any cause, a Magistrate making an inquiry§§ under Chapter XV of this Act is unable to complete the proceedings himself, any other Magistrate, having jurisdiction to inquire§§ and to commit,‖‖ may complete the case and proceed as if he had recorded all the evidence himself.

§§ S. 4.
‖‖ S. 143.

Chapter XV refers to inquiry into cases triable by Court of Session.

When a commission may issue.

330. Whenever it appears that the attendance of a witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, it shall be competent to a Court of Session or to a High Court to dispense with the personal attendance of such witness.

Mode of issuing commission.

Such Court of Session or High Court may direct a commission to the Magistrate* of the District, or to a Magistrate† of the first class, in whose jurisdiction such witness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the evidence of such witness in the same manner, and shall have for this purpose, and may exercise, the same powers, as in trials of warrant cases.‡

* S. 35.

† S. 19.

‡ Chap. XVII.

Prosecutor and accused may examine witness.

The prosecutor and the accused person may forward interrogatories, to which the officer to whom the commission is directed shall cause a return to be made, or the prosecutor may appear personally before the Magistrate to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.§

§ S. 186.

Procedure when commission is required in Magistrate's cases.

Whenever, in the course of a trial‖ before a Magistrate, it shall appear that a commission ought to be issued for the examination of a witness whose evidence is necessary in such trial, such Magistrate shall apply to the Court of Session, to which he is subordinate, stating the reasons for the application; and such Court may either issue a commission in the manner hereinbefore provided, or may reject the application.

‖ S. 4.

Notes by Select Committee on Chapter XXV.

We have provided that, in addition to summons cases, the Court may, in the trial of certain specified offences, record evidence in the mode provided for summons cases. The object being to simplify the record in trials where technical points are not likely to occur.

We have restricted the power of tendering a pardon, on condition of evidence being given to cases triable exclusively by a Court of Session.

CH. XXV.
s. 331.

CHAPTER XXV.—ss. 331—349.

EVIDENCE HOW TAKEN.

* S. 4.

Examination of complainants and witnesses.

331. In all Criminal* Courts, complainants and witnesses shall be examined upon oath or affirmation, or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

The provisions of the law now in force are contained in the following Acts: Act V, 1840; Act XVIII, 1863; Act VI, 1872.

The Oudh and Central Provinces Courts, both (C. O. O. 12 of 1872, C. P.) request that all officers when recording evidence will be careful hereafter to note the sanction under which it has been given. This need not be done in any cumbrous form: a note between brackets thus (upon S. A.) would suffice when the evidence is given on solemn affirmation, or thus (upon oath) when the evidence is given on oath.

Whenever for any reason (*e. g.*, the youth or ignorance of the witness) evidence is taken without an oath, or any other similar sanction, the reason of this omission should be distinctly but briefly recorded between brackets, as a heading to the evidence itself of such witness.

The heading of depositions should also state clearly whether the person examined is plaintiff or defendant, or witness for the prosecution, or witness for the defence, or witness summoned by the Court.

It is most necessary that there should be no obscurity regarding the date of any evidence or order. The date must be clearly written at the commencement of every judicial proceeding and repeated on every subsequent day, the month being stated in letters not in figures. Further, that there may be no doubt, the point where the proceedings of any day end, the Judicial Officer's signature is always to be appended at the end, and the date repeated briefly in figures. See also Oudh Jud. Com. C O. 116, 1860.

The Judicial Commissioner, Oudh, in Book Cir. No. X of 1872, has notified his opinion that Criminal Courts in Oudh are authorized to administer a solemn affirmation under the general instructions of February 1856, and that they are further authorized to administer oaths, whenever they consider an oath will be more binding than a solemn affirmation under the instructions of October 1858. If they administer a solemn affirmation they must do so in the form prescribed by Act V of 1840, but if they administer an oath, they may do so in any form which may be ascertained to be most binding on the conscience of the witness.

A person called upon to take an oath or make a solemn affirmation may, if he objects in place thereof, make a simple affirmation.

A witness cannot be examined on both oath and solemn affirmation at the same time. (Hossein Sirdar, W. R., XIII, 17.)

Touching the examination of a purdah lady, the Calcutta High Court remarked in the case of Bibi Rookia Banu, B. L. R., I, Ap. VI, that Courts have no power to compel such lady to leave her palanquin to give evidence. Her identity must first be sworn to by a credible witness. Where there is any doubt as to whether or not an applicant is entitled to this privilege, the rule should be in favor of the lady.

The Agra High Court (S. N. A., C. O. 104, 1854, and Jud. Com., C. P., 1659, 1865) have laid down that no Magistrate can record a deposition until the witness shall have conformed to the requisitions of the law for administration of oaths. Once a witness has taken an oath or solemn affirmation, all he may subsequently depose to during the trial will be on oath, and a prosecution for false evidence will lie, even though he has never been again reminded of his oath. (Agra S. N. A., 1862, 39, Moorlee; Madras H. C., 1864.)

Witnesses, when they are able to do so, should always sign the record of the evidence recorded in the vernacular if they can read and understand the same; similarly European witnesses should sign the English record.

Confessions, depositions, and all such documents should show, on the face of them, the name, religion, parentage, age, residence, and profession or occupation of the deponent, and also the name and style of the recording officer, the date and place of recording, and, where an oath or affirmation has been administered, the name of the person administering the same, and should be signed by the recording officer, as soon as completed, with the verifications as above required in certain cases. Confessions should usually be attested by three or four respectable witnesses where possible. (C. O. Ben., 11, 1862.)

In trials, &c., of E. B. S., each separate sheet, if the examination or deposition extends over more than one, should be authenticated with the signature and official designation of the Justice of the Peace. (Panj. C. O. 7, 1856.)

Manner of recording evidence:

332. In inquiries* and trials (other than summary trials†) under this Act, the evidence of the witnesses shall be recorded by the Magistrate or Sessions Judge, as the case may be, in the following manner.

* S. 4.
† S. 222.

The Agra High Court, in C. O. 2 of 1867, order all evidence to be recorded on foolscap paper in a clear legible hand, not upon loose scraps of paper.

In summons cases and in trials by Magistrates of the first and second classes of certain offences;

333. In summons cases‡ tried before Magistrates, and in cases of the kind referred to in section two hundred and twenty-two, when tried§ by a Magistrate‖ of the first or second class, otherwise than at a summary trial,¶ the Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds.

‡ Ss. 4, 203.
§ S. 4.
‖ S. 19.
¶ S. 222.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

CH. XXV. ss. 333, 334.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Sign, *i. e.*, with his usual full signature, not with his initials or lithographed stamp.

The Judicial Commissioner, Oudh, orders that, when during the investigation of a case under this section it appears to the Magistrate that a witness is giving false evidence, so that criminal proceedings against such witness are likely to be necessary, the Magistrate should, under s. 336, take down at least the evidence of the particular witness at length in the manner prescribed in ss. 334 or 335, as the case may be. It must not be understood that a full record of the evidence in the vernacular or any language is necessary to a conviction for perjury; but this precaution will serve to obviate doubts which might exist regarding the accuracy of the Magistrate's brief note of the evidence, where the commitment rested wholly or mainly on that note. (Oudh Judicial Commissioner.)

For Panjab and Lower Bengal rules, see Appendix, "Record."

* S. 6, n.

In all other cases before Magistrates and in all proceedings before Courts of Session.

334. In all other cases before Magistrates,* and in all proceedings before the Courts of Session, the evidence of each witness shall be taken down in writing in the language in ordinary use in the district in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate or Sessions Judge, and shall be signed by the Magistrate or Sessions Judge.

Evidence in English.

When the evidence of a witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand; and an authenticated translation of the same, in the language in ordinary use in the district in which the Court is held, shall form part of the record.

† S. 71.

If the accused person be a European† British subject, or be familiar with the English language, no translation shall be necessary.

Memorandum when evidence not taken down in writing.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge, with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

The memorandum should be in a legible hand, and, if not so recorded, an attested copy written legibly should be forwarded when the case is appealed, referred to, or called for. It is not enough to state in the memorandum, "ditto ditto," or "this witness deposed similarly to the former witness."

The signature of the Judge or Magistrate should be his ordinary signature, not his initials.

For Panjab and Lower Bengal rules, see Appendix, "Record."

Local Government may direct evidence to be recorded by Sessions Judge or Magistrate himself in his vernacular;

335. The Local Government may direct that, in any District or part of a District, or in proceedings before any Court of Session, or before any Magistrate* or class of Magistrates, the evidence of complainants or witnesses shall be taken down by the Sessions Judge or Magistrate* with his own hand in the vernacular language of the Sessions Judge or Magistrate,* unless the Sessions Judge or Magistrate* be prevented by any sufficient reason from taking down the evidence of any complainant or witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

* S. 6, n.

The evidence so taken down shall be signed by the Sessions Judge, or Magistrate, and shall form part of the record:

or in English or in language in ordinary use in district.

Provided that, if the vernacular language of the Sessions Judge or Magistrate be not English or the language in ordinary use in the District in

which the Court is held, the Local Government may direct him to take down the evidence in the English language, or in the language in ordinary use in the District in which the Court is held, instead of his own vernacular.

On the 30th June 1864, the Government of Bengal ordered all Magistrates to follow the provisions of this section; and on the 6th August 1865, issued similar orders to all Courts of Sessions.

In the Central Provinces, Panjab, and Oudh, the Government have ordered that, if the vernacular of the presiding Judge be English, the evidence may be recorded in that language, but if not, it should be recorded in the vernacular of the Judge.

The following rules have been issued in the Non-Regulation Provinces:

1. When the record is in English, all depositions should be on separate half or quarter sheets foolscap, quarter margin, fastened together at the corners. The papers transferred from the file of the committing officer should be inserted in their proper places, so that the trial may be read off continuously.

2. The head clerk, or clerk of the Court, should prepare all the papers of each case for the Judge; the whole of the opening sheet; the names and parentage of all the witnesses and prisoners should be entered; the translation of all the transferred papers should be looked to; and the same official might be entrusted with the drawing up of the judgment, as far as the formalities of the Code of Procedure and other formal entries are concerned, and the inspection of the file to see that the formal provisions of the Code have been attended to. (Jud. Com., Cen. Prov., XVI, 1863; Punjab, 1863.)

3. The presiding Magistrate will note when prevented by any sufficient reason from taking down the evidence of any witness; he must record the reason, and himself dictate the evidence to be written. The only reason that can be accepted as sufficient is physical inability from accident, or otherwise, to write. Something more than a mere summary of the evidence, as under Chapter XV, is required; it should be in full, in the first person, and be recorded on a separate paper.

4. As all evidence is to be in the handwriting of the Magistrate, every proceeding of the Court must also be entered by the Magistrate himself in its proper place, with date attached. No order, of however little importance, should be omitted. Orders dismissing witnesses should be recorded, as a witness is not entitled to absent himself as soon as he has been before the Court.

5. In the same way where a report is called for from the Police or the office, it should be noted in the proper places,—what report was called for, and what answer was given. Every order of adjournment must also be entered, and when the investigation is resumed, it must be duly recorded with the date. (*Ibid*, XXIX, 1864.)

In cases of doubt as to the exact meaning of a word or sentence, such word or sentence should be transcribed in the Roman character.

Where the evidence is given in a language not understood by the accused, an interpreter should be sent for or the Court should interpret it to him. (*Vide* S. 339.)

In the N. W. P. no orders have been issued.

In the Panjab G. O. (23rd December 1870), all Native Judicial Officers shall, in criminal trials, take down the evidence of witnesses in their own handwriting in full. Should they be prevented by any sufficient reasons from taking down the evidence of any witness, in such case they shall record the reason of their inability to do so, and shall cause the evidence to be taken down in writing, from their dictation in open Court.

For further rules, see Appendix, "Record."

In cases referred to in section 333, Magistrate may record as provided in section 334 or section 335.

336. In cases of the kind referred to in section three hundred and thirty-three, tried before Magistrates, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section three hundred and thirty-four, or, if, within the jurisdiction of such Magistrate, the Local Government has made the order referred to in section three hundred and thirty-five, in the manner provided in section three hundred and thirty-five.

It will be expedient to follow the provisions of S. 334, if a Court under the impression that a man is making a false statement intends committing him for perjury. (Cal. H. Ct. C. O. 4, 1864.)

Local Government to decide what language is to be held to be in ordinary use.

337. The Local Government may determine what, for the purposes of this Act, shall be held to be the language in ordinary use in any district in which a Court is held.

Form of record of evidence.

338. The evidence taken under section three hundred and thirty-four shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

It shall be in the discretion of the Magistrate or Sessions Judge to take down, or cause to be taken down, any particular question and answer, if there appears any special reason for so doing, or if any person who is a prosecutor or a person accused, or his counsel or agent,* requires it.

* S. 186.

Procedure in regard to evidence when completed.

339. As the evidence of each witness, taken under section three hundred and thirty-four, is completed, it shall be read over to the witness in the presence of the accused per-

CH. XXV. ss. 339, 340.

son, if in attendance, or of his agent when his personal attendance is dispensed with and he appears by agent,* and shall, if necessary, be corrected.

* S. 186.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

Interpretation of evidence to accused or his agent.

340. In all cases whatever, when the evidence is given in a language not understood by the accused person, it shall be interpreted to him in open Court in a language understood by him, where he is present in person.

† S. 186.

If he appears by agent,† and the evidence is given in a language other than the language in ordinary use in the district in which the Court is held, it shall be interpreted to such agent in that language.

In cases in which documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Counsel and pleaders may be allowed to address the Court in English, with or without the consent of both parties.

Due provision should be made, where necessary, for the interpretation of what the speaker says into the language of his opponent; any cost of such interpretation being borne by the party using English. (N. W. P., 186 of 1867.)

A prisoner has a right to have all or any part of a document used on his trial translated to him, yet when it is used simply as formal proof of an incontestable fact, it would not be necessary to interpret it at length. (Amirooddeen, W. R, XV, 25.)

Remarks respecting demeanour of witness.

341. Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the demeanour of such witness whilst under examination.

OF THE EXAMINATION OF ACCUSED PERSONS.

Accused may be questioned.

342. In all inquiries* and trials,* a Criminal* Court may, from time to time and at any stage of the proceedings, put any questions to the accused person which such Court may think proper.

* S. 4.

See s. 193 for the procedure to be followed in cases triable by the Court of Session.

The examination of the accused should contain a full heading of the charge against him.

Accused not punishable for refusal to answer.

343. The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely questions asked under section three hundred and forty-two, but the Court shall draw such inference as seems just from such refusal.

No influence to be used to induce disclosures.

344. Except as is provided in section three hundred and forty-seven, no influence, by means of any promise or threat or otherwise, shall be used to the accused person to induce him to disclose or withhold any matter within his knowledge.

These words must be carefully borne in mind, "*no influence, by means of any promise or threat or otherwise.*" Confessions obtained by any of these means are worthless, and will on appeal be treated as such. They should also be taken as a whole. (See further notes to s. 193.)

The following precautions should be attended to in accepting and recording confessions. The recording officer should be mild and patient in his examination; should exert himself to ascertain whether any undue influence has been brought to bear upon the prisoners; should make the prisoner sensible that he is secure against such practices now; and take care that confessions before others should not appear as confessions made before himself from being read over to the prisoner and obtaining his assent; but satisfy himself that the statements are deliberate and spontaneous by allowing the prisoner to tell his own story; and to be watchful that prisoners while in custody are not subject to be influenced in their confessions. (C. O., Ben., 73, Vol. I.)

See also Appendix, "Record."

Accused not to be sworn.

345. No oath or affirmation shall be administered to the accused person.

If any oath or affirmation be so administered, the irregularity will vitiate all subsequent proceedings. (Ghasee Ram, S. N. A., Agra, 52, 1863.)

Examination of accused how recorded.

346. Whenever an accused person is examined, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate or Sessions Judge, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

In cases in which the examination of the accused person is not recorded by the Magistrate* or Sessions Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the vernacular of the district, or in English, if he is sufficiently acquainted with that language; and such memorandum shall be written and signed by the Magistrate* or Sessions Judge with his own hand, and shall be annexed to the record. If the Magistrate* or Sessions Judge is precluded from making a memorandum as above required, he shall record the reason of his inability to do so.

* S. 6, n.

The accused person shall sign or attest by his mark such record.

If the examination be taken in the course of a preliminary inquiry,† and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded: Provided that, if the error does not prejudice the prisoner, it shall not be deemed to affect the admissibility of the statement so recorded.

† S. 4.

Calcutta High Court [Circular 19, 1864] has ordered that the examination of an accused shall contain his or her name, that of his or her father; and if a married woman, that of her husband, the religion, caste, profession, and age of the accused person, and the village or pergunnah in which he or she resides.

The examination of an accused person should always be headed as directed in note to s. 193, *q. v.*, and should invariably, where possible, be recorded in the language of the accused. (Gunesh Koormee, W. R., IV, 1; Cal. H. Ct. Cir. Ord IX, 1865; Jud. Com., Oudh, L., 1866; Bheebeekee, N. W. P., 7th February 1872.) Every question as put and answer as given should be recorded, and it can only be taken down in the presence and hearing of the Magistrate or Sessions Judge, and further the whole must have his attestation signed by him (not initialled), or it will not be received. (Cal. H. Ct., Musst. Nirani, VII., 49; Cir. Ord. 11, 1867. II, Bomb. H. Ct., Zimmi, 131; Kalla Lakhmaji, *ibid*, 420; S. N. A., Agra, Gokla, 1862, 107; Goverdhun, 149; Dharee, 122; Bhola, 126; Bheebeekee, N. W. P., 7th February 1872.)

Book Circular Order XI of 1871, Central Provinces, directs that, where this examination is not recorded by the Magistrate himself, the Magistrate is directed to record it also in his own vernacular or in English, if he be sufficiently conversant with the same. Where two copies are thus recorded, both should be transferred to the file of the Sessions Court; and if neither be in English, an authenticated translation of it, as recorded in the accused's vernacular, should be made into English, and filed along with the Sessions record.

Initials readable or unreadable are not the same as a signature, and useless under this section. (Bhikaree, S. W. R., XV, 63, and again Chupput Khyridar, *ibid*, 83.)

Goshto Lal Dutt, B. L. R., Vol. VII, A. P., 62. Under s. 346 it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused, and every answer given by him, and that he had liberty to add to or explain his answers. Attestation at the foot of the examination is sufficient, but in case of doubt, oral evidence should be admitted to prove the regularity of the proceeding.

In Oudh it has been ruled that the examination be recorded in the language in which it is delivered, as well as in that of the officer trying the case, and the following certificate is to be affixed :—"Certified that the above examination of the accused ———— has been taken in my presence and in my hearing, and contains accurately the whole of the statement made by him."

The attention of all Magistrates is drawn to the material difference between the *examination* and *defence* of an accused person. By s. 346 the whole of the examination of an accused person, including every question put to him, and every answer given by him, must be recorded in full; and, if the provisions of this section are not complied with, the Court of Sessions, in cases coming before that Court, will be obliged to take evidence that the prisoner duly made the statements recorded (s. 342.) The examination of an accused person should always be recorded on one or more sheets of paper separate from the general record of the evidence: the questions to be put must be such as refer to some particular point in the evidence for the prosecution to which a distinct reply can be given. A general question, such as—"What have you got to say," is inadmissible. Such a question practically calls on the accused to make a statement on his defence. The object of an examination is not to elicit the defence which the accused may wish to make, but to obtain his version of the facts as spoken to by the witnesses against him.

CH. XXV. s. 347.

* S. 35.
† S. 19.
‡ S. 4.
§ S. 143.

Magistrate may tender pardon to accomplice.

347. The Magistrate* of the District, any Magistrate† of the first class inquiring‡ into the case, or with the sanction of the Magistrate* of the District, any Magistrate§ duly empowered to commit to the Court of Session, may, after recording his reason for so doing, tender a pardon to any one or more of the persons supposed to have been directly or indirectly concerned in or privy to any offence specified in column seven of the fourth schedule hereto annexed as triable‡ exclusively by the Court of Session, on condition of his or their making a full, true, and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed, and every other person concerned in the perpetration thereof.

Any person accepting a tender of pardon under this section shall be examined as a witness in the case‖ under the rules applicable to the examination of witnesses.

‖ Ss. 331-341.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.‡

A Magistrate, having tendered a pardon under this section and examined the accused person, is precluded from trying‡ the case himself.

This precludes the admission of pardons tendered by the Police or even a Police Officer invested with Magisterial powers under s. 6, Act V 1861.

This tender may be made by the Magistrate at any time before committal. (N. W. P. Pol. Dep. 767 A of 1861 and C. P. B. C. VII of 1863.)

The Calcutta High Court, in the case of Radhanath Dosadh, W. R., VIII, 53, has held that statements made under this section cannot be received afterwards against an accused when the pardon has been revoked. This ruling is somewhat contrary to the provisions of s. 349 *q. v.*

A Magistrate is competent to tender a pardon to any person. The fact of such party being directly or indirectly concerned in the offence does not preclude him from being admitted as a witness for the Crown under s. 347. (Chundee Churn Banerjee, W. R., VI, 94.)

Certain persons were found guilty of gaming by a Full Power Magistrate, solely on the evidence of a person supposed to have been concerned in the offence, whom the Magistrate had pardoned. Held that the Magistrate has no power to tender a pardon in a case which

he tries himself; but only under s. 209 of the Criminal Procedure Code, in the case of an offence triable by the Court of Session. (Remedios, 3 Bom. Rep., A. C., 59.)

A Magistrate cannot tender a conditional pardon in any case which he intends to dispose of himself (N. W. P., XII of 1862), or which is *triable* by any Court other than the Court of Session or High Court.

High Court or Court of Session may direct tender of pardon.

348. The High Court as a Court of Revision, and the Court of Session after committal but before the commencement of a trial,* may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any such offence,† instruct the committing Magistrate to tender a pardon on the same condition to such person or persons.

* S. 4.

† S. 347.

The Court of Session, in like manner and on the same condition, may, at any time before judgment is passed, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon to such person or persons.

When Magistrate, Court of Session, or High Court may direct commitment of person to whom pardon has been tendered.

349. When a pardon has been tendered under section three hundred and forty-seven or section three hundred and forty-eight, if it appears to the Magistrate before the trial,‡ or to the Court of Session before judgment§ has been passed, or to the High Court as a Court of Reference‖ or Revision,¶ that any person, who has accepted such offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence,** such Magistrate or Court may commit,†† or direct the commitment of such person for trial for the offence in respect of which the pardon was so tendered.

‡ S. 4.

§ S. 46.

‖ S. 207.

¶ S. 292.

** S. 4, n. (*d*).

†† S. 190.

The statement made by a person under pardon, which pardon has been withdrawn under this section, may be put in evidence against him.

CH. XXV.
s. 349.

"Direct the commitment," *i. e.*, direct a Magistrate to commit.

The following ruling shows clearly that although Courts may commit approvers, &c., themselves, their trial should always be held separate from the trial in which they have given evidence as such approvers. (Petumber Dhobee, S. W. R., XIV, 10.)

It was certainly, to say the least of it, unfair to put Ishoree on her trial together with the other prisoners in the course of whose trial, already commenced, she had given testimony as a witness under oath. The consequence of such a proceeding as this was necessarily, as far as assessors were concerned, that she was in truth put to trial upon evidence part of which she had herself given, for the statements that she had made before the assessors involuntarily, when under examination, and her behaviour at the time, could not possibly be without effect upon their minds when they came to consider her case. And, moreover, if other evidence had been taken before her own, so far as they may have borne against her, it was not properly material upon which to try her case, because she had no opportunity of cross-examining. Doubtless, the Court of Session had power under s. 211, upon its being made to appear to it that Ishoree in giving her evidence had not conformed to the conditions under which her pardon was tendered, to withdraw that pardon and to direct her commitment for trial. Whether mere belief on the part of the Judge, drawn from the behaviour of the witness, that he is not speaking the truth at the Sessions trial, is sufficient to satisfy the terms of the section may be doubted. But at any rate the Judge should have taken care that Ishoree was tried independently of the prisoners in whose case she had already given testimony, and so have prevented all matters of prejudice arising from this course, not only to herself, but to them.

A Magistrate may tender a pardon at any time up to committal, a High Court or Sessions Court at any time after committal and before trial, and a Sessions Court alone can after commencement of trial up to the passing of judgment.

Notes by Select Committee on Chapter XXVI.

In Chapter XXVI, we have given Magistrates, in Warrant and Sessions cases, the power of refusing to summon any witness who clearly appears to be unnecessary; we have extended to all warrant and non-cognizable Summons cases the provision now applicable only to Sessions cases, enabling the Court to require deposit of the expenses of a witness prior to summoning him.

We have made the necessary provision for securing documentary evidence, and for impounding such documents as the Court thinks fit.

We have restricted the power to grant warrants of search for letters in the Post Office to Magistrates of Districts.

Under the Criminal Procedure Code, an officer in charge of a Police-station could require an officer in charge of another Police-station to search for anything necessary to the conduct of an investigation, but no power was given to the latter to comply with the requisition. We have supplied the omission.

We have legalized the existing practice of searching arrested persons.

BENGAL SECRETARIAT

CHAPTER XXVI.—ss. 350—367.

OF SECURING THE ATTENDANCE OF WITNESSES.

Procedure for obtaining attendance of witnesses.

350. The following procedure shall be pursued in order to obtain the attendance of witnesses before a Magistrate* or Criminal† Court.

* S. 6, n.
† S. 4.

Power to summon material witness or examine person present.

351. Any Court‡ or Magistrate§ may, at any stage of any proceeding,‡ inquiry or trial,‡ summon,‖ in the manner provided by Chapter XII, any witness, or examine any person in attendance though not summoned as a witness, and it shall be its or his duty to do so if the evidence¶ of such person appears essential to the just decision of the case.

‡ S. 4.
§ S. 6, n.
‖ S. 152, &c.
¶ S. 4, n. (*d*).

Touching the issuing process to compel a Native lady of rank to appear, see note, s. 359.

Each Court in Bengal and Upper India is bound to keep a register of witnesses, and in it to enter daily the number of witnesses who come before it together with the number of days they have been in attendance. For further information, see notes to s. 190, also note to s. 421.

Panjab Book Cir. III of 1871 directs:—

Panjab Witness Register.

I. In Police cases, where recognizances are taken by the Police officer for the witnesses' appearance, the date entered in column 2 of the witness register ("date of arival") shall be the date entered in the recognizance (s. 130). Such witnesses ordinarily arrive on the day fixed, or before it; and where the witness does not arrive, this should be explained in the column of remarks, and the actual date of arrival entered in column 2. But ordinarily, the date of arrival will be checked by the date mentioned in the recognizance, which is filed with the record. In checking the register, therefore, Magistrates should turn up a few cases and compare the dates in the register with the dates in the recognizances filed with the case; and if any discrepancy exists which is unexplained under "remarks," the official who keeps the register should be called to account. Sundays and holidays will be included in calculating the period of detention, and where any considerable delay has resulted from the intervention of holidays, this should be explained under "remarks;" but Magistrates should make special efforts to dismiss all witnesses in attendance on the day preceding a holiday.

II. Where the witness appears on a summons issued from the Magistrate's Court, the date entered in column 2 of the register should be the date mentioned in the summons as that fixed for his appearance. The same checks will apply.

III. A register in the prescribed form shall be kept up in every Magistrate's Court by one of the officials of the Court. It should be initialled by the Magistrate every week.

IV. Where delay has occurred, and any considerable part of it is owing to the case having been detained in the Court of the Magistrate

CH. XXVI. s. 351.

of the district, an explanation to that effect should be entered in the column of remarks.

V. The Magistrate of the District should check every month a few of the diaries kept up in the Courts of his Subordinates, and in the Quarterly Statement of attendance of witnesses certify that he has done so, adding remarks as to the result of his examination. If this certificate is omitted when the Quarterly Statement is received by the Commissioner, that officer should send back the statement, in order that the omission may be supplied.

The N. W. P. High Court Cir. Order strongly condemn a system which was in force in a district, of the Magisterial authority having all the *chulans* of witnesses summoned in criminal cases, brought before him, instead of, as is usual, being taken to the Court Inspector; so many *chulans* only were received as it was thought probable could be disposed of during that day, and consequently any others presented by the witnesses were postponed till the next day. Such a system presented an untrue and erroneous statement of attendance of witnesses in the Diary.

The expediency of examining Police officers summoned to give evidence on the day mentioned in the summons is obvious. In Oudh it is insisted on as far as possible, and where a Police officer is detained beyond the date so fixed, officers are desired to note the detention and reasons for it in their proceedings. (See n., s. 192.)

N. W. P. Cir. Order No. 8 of 1860 directs that the Witness Diaries of subordinate Courts should frequently be inspected by the Magistrate himself.

Every witness, who shall arrive and report himself to the Nazir at the Court by 3 o'clock P. M., or when Court is held early in the morning at an equivalent hour on any day not being a close holiday, shall be entered as having arrived upon that day. The date upon which the witness' attendance is finally dispensed with by an order permitting him to depart is that which shall be invariably entered as the date of dismissal.

In calculating the number of days' attendance, close holidays will be excluded, and, in order to make the necessary entries in columns 8 and 9, the date of arrival and that of dismissal shall each be reckoned as one, unless of course when they are one and the same day.

A foot-note may be attached to the statement No. 4 when necessary, to show the number of witnesses in cases disposed of by a Subordinate Court, who had been previously detained in attendance on a superior one.

Diary of Attendance of Witnesses.

Date of arrival at the Court to which the diary belongs.	Original date of arrival at Court.	Name of Party.	Designation, i. e., Witness or Complainant.	Name of Plaintiff and Defendant.	Date of transfer to another Court.	Date of dismissal.	No. of days of Witness' Attendance.		Name of Deposition Writer.	Remarks.
							At Court disposing of the case.	Total attendance at Court.		

A complainant mentioned the names of several witnesses in his behalf and was requested to produce them on a certain date; instead of doing so, he produced only two witnesses, who were examined. *Held* that, as he did not apply to the Magistrate to issue summonses on the other witnesses, or ask him to proceed under this section, the Magistrate was not wrong in law in deciding the case on the evidence before him. (*In re* Notobur Bera, S. W. R., XV, 87.)

When warrant of arrest may issue in first instance.

352. If a Court* or Magistrate† has reason to believe that any witness whose attendance is required will not attend to give evidence* without being compelled to do so, it or he may, instead of issuing a summons, issue a warrant‡ of arrest in the first instance.

* S. 4.
† S. 6, n.
‡ S. 159.

Witnesses arrested under this section should be treated as persons arrested under a civil process rather than as criminals. (Cal. H. Ct. C. O. 21, 1864.)

The mere *ipse dixit* of a mukhtár or complainant should not suffice for issue of warrant in the first instance. It would often be sufficient revenge for a native to get his enemy even momentarily arrested.

Procedure when warrant cannot be served.

353. If such warrant cannot be executed, and the Court§ or Magistrate‖ considers that the witness absconds or conceals himself for the purpose of avoiding the service thereof, it or he may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of such witness' ordinary place of abode.

§ S. 4.
‖ S. 6, n.

If the witness does not attend at the time and place named in such proclamation, the Court or Magistrate may order the attachment of any moveable property¶ belonging to such witness to such amount as seems reasonable, not being in excess of the amount of costs of attachment and of any fine to which the witness may be liable under the provisions of the following section.

¶ S. 307, n.

Such order shall authorize the attachment of any moveable property within the jurisdiction of the Court or Magistrate by whom it was made; and it shall authorize the attachment of any moveable property without the jurisdiction of the said Court

or Magistrate when endorsed by the Magistrate* of the District in which such property is situated.

* S. 35.

Release of attached property of witness appearing and satisfying Court or Magistrate.

354. If the witness appears and satisfies such Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court or Magistrate shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as to such Court or Magistrate seems fit.

Sale of property of witness not appearing or not satisfying Court or Magistrate.

If such witness does not appear, or appearing, fails to satisfy the Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court or Magistrate may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of section one hundred and seventy-two of the Indian Penal Code.

If the witness pays to such Court or Magistrate the costs and fine as aforesaid, his property shall be released from attachment.

The extreme amount of fine that can be imposed under s. 172, Penal Code, is Rs. 500.

A person against whom an informal warrant has been issued and on his not surrendering has suffered attachment of property, should appear before the Magistrate issuing the warrant and apply for discharge on the ground of the informality of the warrant, at the same time he might ask for the release of his property, but he should not in the first instance apply to the High Court. (Bisheshur Pershad, N. W. P., 3rd December 1870.)

Arrest of person disobeying summons.

355. If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court or Magistrate,* upon proof of the summons having been duly served, may issue a warrant under his hand and seal, to bring such person before him to testify as aforesaid. * S. 6, n.

Issuing a warrant of arrest is optional, not compulsory.
"*Reasonable*," *i. e.*, moral or physical impossibility. (W. R., C. L., 653, 1865.)

Committal of person refusing to answer.

356. If any person summoned or brought before a Magistrate refuses to answer such questions as are put to him, without offering any reasonable excuse for such refusal, such Magistrate may, by warrant under his hand and seal, commit him to custody for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section four hundred and thirty-five or four hundred and thirty-six.

See also ss. 122—125, 132, 146—148, 151, 152—155, Act I of 1872. For procedure to be followed in case of persistent refusal, see ss. 435, 436 of this Act.

INQUIRIES.

In inquiries preliminary to commitment.

357. In inquiries† preliminary to commitment to a Court of Session or High Court, the Magistrate shall procure the attendance of the witnesses for the prosecution‡ as in cases usually tried upon warrant; and it shall be in his discretion to summon any witness offered on behalf of the accused person to answer or disprove the evidence§ against him. If the Magistrate refuses to summon a witness so offered, he shall record his reasons for such refusal. † S. 4. ‡ S. 362. § S. 4, n. (*d*).

Power to summon supplementary witnesses.

The Magistrate may summon and examine supplementary witnesses after commitment and before the commencement of the trial,* and bind† them over to appear and give evidence. Such examination shall, if possible, be taken in the presence of the accused person, and, in every case, a copy of the examination of such witnesses shall be given him free of cost.

* S. 4.
† S. 360.

When accused person is to be committed.

358. In such inquiries,‡ when the person accused is to be committed for trial,§ and has given in the list of witnesses mentioned in section two hundred, the Magistrate shall summon the witnesses to appear before the Court before which the accused person is to be tried.§

‡ S. 357.
§ S. 4.

Save as provided in s. 359, the Magistrate has no option but to summon these witnesses when required by the accused to do so.

Refusal to summon unnecessary witness, unless deposit made.

359. If the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material.

If the Magistrate be not so satisfied, he shall not be bound to summon the witness, but, in doubtful cases, he may summon such witness, if such a sum is deposited with the Magistrate as he thinks necessary to defray the expense of obtaining the attendance of the witness.

In re Jannobee Chowdhrain, Cal. High Ct. (24th June 1872) ruled as follows :—

It appears that in a Sessions case this lady has been cited by one of the prisoners as a witness. The Deputy Magistrate of Tangail, Mr. Andrews, was of opinion that the witness was included in the list of witnesses cited by the defendant for the purpose of vexation, and that, as the accused person was not able to satisfy the Deputy Magistrate that there were reasonable grounds for believing that the evidence of this lady was material, the Deputy Magistrate therefore refused to summon her. The Sessions Judge states, on the information of counsel, that

the witness was a material witness; that he has directed her to be summoned, and the trial has been adjourned for that purpose. Under s. 351, the Sessions Judge has the discretion at any stage of a trial to summon and examine any witness whose evidence he shall consider essential to the just decision of the case. It does not appear to us that in the exercise of this discretion the Sessions Judge has satisfied himself that the evidence of this lady is material, or that there are reasonable grounds for believing that such evidence is essential for the just decision of the case, and it was all the more incumbent upon the Sessions Judge to have done so, because the Deputy Magistrate had held that this lady was summoned by the prisoner for purposes of vexation. We therefore direct the Sessions Judge first, on consideration of the evidence for the prosecution, and after examining the prisoner, to satisfy himself that the evidence of this lady is essential for the just disposal of the case, and if he arrives at the opinion that her attendance is essential for the just decision of the case, and that it is necessary to examine her, he will examine her in such a manner as is consistent with native social usages, taking care that she is not subjected to any insult. We leave this to the discretion of the Judge, who will take into consideration the rank of the lady and her social position.

In the meantime no warrant will issue.

See also Queen *v.* Ram Dyal Doss, Cal. High Ct.

The ends of justice do not require the attendance of the lady who is a female of respectability and secluded habits. To insist upon her attendance in a case in which no distinct charge is made, would simply be to disgrace the family.

There is no provision in the Act by which Magistrates of Districts are obliged to serve summonses sent to them from other districts, but as a matter of convenience and policy they should ordinarily ensure the service of such processes when sent to them. Still before they give their aid they are fully justified in exercising a discretion, and, when needful, preventing persons being needlessly dragged from their homes hundreds of miles. (Book Cir. 34, C. P., 1863.)

Inconvenience to a public servant or the State cannot be allowed to interfere with the cause of justice. (Shumshoo, S. N. A., Agra, 36 of 1863.)

Recognizances of prosecutors and witnesses.

360. Prosecutors, and witnesses for the prosecution and defence, whose attendance is necessary before the Court of Session or High Court, shall execute before the Magistrate recognizances, in the form (F) given in the second schedule to this Act, or to the like effect, to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence,* as the case may be.

* S. 4, n. (*d*).

Detention in custody in case of refusal to attend or to execute recognizance.

If any prosecutor or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in

CH. XXVI. ss. 360—362.

custody, until he executes such recognizance, or until the time when his attendance at the Court of Session or High Court is required, when the Magistrate shall send him under custody to the Court of Session or High Court.

By Agra S. N. A. 4 of 1866, Mofussil Magistrates are authorized to make reasonable advances to persons desiring it to enable them to reach the High Court. They should inform the Registrar of these advances, who will then refund them to the Magistrate who allowed them.

The Magistrate of the District will inform the Registrar of the date of departure of prosecutors and witnesses, and will instruct them to report themselves on their arrival to that officer at Allahabad. See n., s. 196.

In case, Ameer Khan, 25th March 1870, inquiry should be made into the excuse given by a person for his non-attendance as a witness, before forfeiting his recognizances to appear, so that the discretion given in s. 398 may be fairly exercised. For appeal and revisions of similar orders, see s. 398.

See also notes to s. 198.

SUMMONS CASES.

* S. 4.

In summons cases.

361. In summons* cases, the Magistrate may summon any person who appears to him likely to give material evidence† on behalf of the complainant or the accused.

† S. 4, n. (*d*).

Ordinarily it shall be the duty of the complainant and accused, in non-cognizable* cases, to produce their own witnesses.

In such cases, it shall be in the discretion of the Magistrate to summon any witnesses named by the complainant or the accused; and he may require, in such cases, a deposit of the expenses of a witness before summoning him.

An accused person is entitled to have his witnesses (when present) examined, even if those witnesses were named as implicated in the offence with which the accused is charged. (Ram Sahay Chowdhry, S. W. R., XV, 7.)

WARRANT CASES.

‡ S. 4.

In cases tried upon warrant.

362. In warrant‡ cases, the Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with

the facts and circumstances of the case, and who are likely to give evidence* for the prosecution, and shall summon such of them to give evidence before him as he thinks necessary.

* S. 4, n. (d).

The Magistrate shall also, subject to the provisions of section three hundred and fifty-nine, summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence* against him, and may, for that purpose, at his discretion, adjourn the trial from time to time. If the Magistrate refuse to summon a witness named by the accused person, he shall record his reasons for such refusal, and the accused person shall be entitled to appeal to the Court of Session against such refusal.

See n., s. 361.

Section 359 is that which authorizes refusal to summon unnecessary witnesses unless deposit is first made. See n., s. 358.

Sessions Trials.

Right of accused as to examination and summoning of witness.

363. The accused person shall be allowed to examine† any witness not previously named by him, if such witness be in attendance; but he shall not, except as provided in section four hundred and forty-eight, be entitled of right to have any witness summoned other than the witnesses named in the list delivered‡ to the Magistrate by whom he was committed or held to bail for trial.

† S. 331.

‡ S. 200.

Section 448 refers to cases when a new trial may be directed or a trial suspended.

Procedure in case of witness refusing to answer.

364. If a witness before a Court of Session refuses to answer any question which is put to him, and does not offer any just excuse for such refusal, the Court may commit him to custody for such reasonable time as it deems proper, unless in the meantime he consents to be examined and to answer.

CHS. XXVI., XXVII. ss. 364—368.

In the event of such witness persisting in his refusal, he may be dealt with according to the provisions of section four hundred and thirty-five or four hundred and thirty-six.

Ss. 435, 436 refer to contempts of Court.

Of Securing Documentary Evidence.

Procedure for obtaining production of document required as evidence.

365. Whenever an officer in charge of a Police-station or any Court considers that the production of any document* is necessary or desirable for the purposes of any investigation† or judicial proceeding, such officer or Court may issue a summons to the party, in whose keeping such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

* S. 4, n. (*d*).

† S. 4.

And if he does not comply with the requisition, he is liable to punishment under s. 175, P. C.

When warrant for search for documents may issue.

366. If there appears reason to believe that the person, to whom the summons is addressed, will not produce it as directed in the summons,‡ such officer or Court may issue a search-warrant for the document§ in the first instance.

‡ S. 365.

§ S. 4, n. (*d*).

Power to impound document produced.

367. Any Court may, if it thinks fit, impound any document‖ produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

‖ S. 4, n. (*d*).

CHAPTER XXVII.—ss. 368—387.

Of Search-Warrants.

Search-warrant when grantable.

368. When a Magistrate¶ considers that the production of anything is essential to the conduct of an inquiry**

¶ S. 6, n.

** S. 4.

into an offence* known or suspected to have been committed, or to the discovery of the offender,

or when he considers that such inquiry† or discovery will be furthered by the search or inspection of any house or place,

he may grant his search-warrant; and the officer charged with the execution of such warrant may search or inspect any house or place within the jurisdiction of the Magistrate‡ of the District.

The Magistrate, issuing such warrant, may, if he see fit, specify in his warrant the house or place, or part thereof, to which only the search or inspection shall extend; and the officer charged with the execution of such warrant, shall then search or inspect only the house, place, or part so specified.

* S. 141, n.
† S. 4.
‡ S. 35.

A search should ordinarily be made between sunset and sunrise. But a District Superintendent of Police or Magistrate may allow a search by night if there be any special reason for doing so.

Police officers invested with the powers of a Magistrate under s. 6, Act V, 1861, can issue search warrants. Under Act XXV of 1861, if a murderer was proved to have been in a house, it could not be searched except there was reason to believe that the knife with which the crime was committed, or the property for the possession of which it was committed, or some other particular thing, was secreted therein. Now the house may be searched on the chance of finding something which may lead to the elucidation of the case.

Procedure as to letter in custody of Postal Department.

369. The last preceding section shall not authorize any Magistrate, other than the Magistrate§ of the District, to grant a search-warrant for a letter in the custody of the Postal Department;

§ S. 35.

but if any such letter is wanted for the purpose of any criminal proceeding, any Magistrate or District Superintendent of Police may give notice to the Postal authorities to cause search to be made for and to detain any such letter, pending the orders of the Magistrate§ of the District; and the Magistrate of the District may, if he thinks fit, direct the Postal authorities to deliver up any such letter.

Direction of search-warrant.

370. A search-warrant shall ordinarily be directed to a Police officer; but the Magistrate issuing the warrant

may, after recording his reasons, if immediate search is necessary and no Police officer be immediately available, direct it to any other person.

Warrant to Police officer may be executed by his subordinate.

371. A search-warrant directed or endorsed to a Police officer may, if he is not able to proceed in person, be executed by any other Police officer.

Endorsement.

In such case the name of such Police officer shall be endorsed upon the warrant by the officer to whom it is directed or endorsed.

Execution of search-warrant out of district in which issued.

372. When it is necessary for a search-warrant to be executed out of the District in which it was issued, any Magistrate within whose local jurisdiction the warrant is to be executed shall endorse his name thereon.

Such endorsement shall be sufficient authority for the Police officer charged with the execution of the warrant to execute the same within the said jurisdiction.

Or the search-warrant may be directed to the Magistrate within whose local jurisdiction the search is to be made; and he shall thereupon endorse his name on such warrant, and enforce its execution in the same manner as if it had been issued by himself.

Search-warrants may, in emergency, be executed without endorsement.

* S. 35.

373. Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate* in whose District the warrant is to be executed will prevent the discovery of the thing for which search is to be made, the Police officer charged with the execution of the warrant may execute the same, in any place beyond the District in which it was issued, without the endorsement of the Magistrate in whose local jurisdiction that place is situate.

Thing found to be taken to Magistrate within whose jurisdiction it is found.

If the thing for which search is made is found in such place, it shall, when the place where the thing is found is nearer to the Magistrate having jurisdiction in such place than to the Magistrate who issued the warrant, be immediately taken before the Magistrate in whose local jurisdiction it is found; and unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to the Magistrate* who issued the warrant.

Order thereon.

* Chap. VI.

If the thing be not found after such search, the Police officer making the same shall, in addition to the return made to the Magistrate who issued the warrant, report the fact to the Maigstrate in whose local jurisdiction the search was made.

A Police officer using this discretionary power in good faith will be protected by ss. 76, 79, P. C.

In Oudh, only property judicially impounded is to be kept in the Magistrate's malkhanah,—*i. e.*, property which can be used as evidence in the case under investigation, as the sword with which a person is alleged to have been killed, or the clothes found in the house of the accused which the prosecution identify; money, unless it is supposed to be the identical money stolen, should not be kept there, even though found on the person of the accused. (Oudh Book Cir. Order 35, 30th December 1869.) See Appendix, "Malkhanah."

Procedure in such cases within Presidency town.

374. If the thing searched for be found within a Presidency† town, it shall be taken to the Commissioner of Police or to a Police Magistrate; and such Commissioner or Magistrate shall act in the manner prescribed in section three hundred and seventy-three.

† S. 4.

Magistrate may issue search-warrant to be executed in jurisdiction of another Magistrate.

375. Whenever it appears necessary, a Magistrate may, by his warrant, order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made.

When a Magistrate issues a warrant under this section, he shall inform the Magistrate within whose local jurisdiction the house or place to be searched is situate, or if the house or place be situate within a Presidency* town, he shall inform the Commissioner of Police of the issue of such warrant.

* S. 4.

Magistrate may send search-warrant by post to Magistrate of another District or Division of District.

† S. 35.

376. A Magistrate issuing a search-warrant to be executed in any house or place out of the jurisdiction of the Magistrate† of the District, or out of his own Division, may direct the warrant to any Magistrate within whose local jurisdiction such house or place is situate, and may send the same by post.

Endorsement and execution by such Magistrate.

On receipt of such warrant by the Magistrate to whom it is directed, he shall endorse his name thereon, and enforce its execution in the same manner as if it had been originally issued by himself.

‡ S. 4.

Direction of warrant to be executed in Presidency town.

If the warrant is to be executed within a Presidency‡ town, it shall be addressed to the Commissioner of Police or to a Police Magistrate.

In such case, any property found on search made may be dealt with as provided in sections three hundred and seventy-three and three hundred and seventy-four.

§ S. 35.
‖ S. 40.
¶ S. 19.

Search of house suspected to contain stolen property or forged documents.

377. If the Magistrate§ of the District, or a Magistrate‖ of a Division of a District, or a Magistrate¶ of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any house or place is used as a place for the deposit or sale of stolen** property,

** S. 410, P. C.

†† S. 464, P. C.
‡‡ S. 255, P. C.
§§ S. 231, P. C.

or for the deposit or sale or manufacture of forged†† documents, or counterfeit‡‡ Government stamps, or counterfeit§§ coin, or instruments or materials for counterfeiting coin or for forging,

or that any forged documents, or counterfeit stamps, or false seals, or counterfeit coin or instruments or materials used for counterfeiting coin, or for forging, are kept or deposited in any house or place,

he may by his warrant authorize any Police officer above the rank of a constable to enter, with such assistance as may be required, and by force if necessary, any such house or place, and to search all such parts of the same as are specified in the warrant, and to seize and take possession of any property, documents, stamps, seals, or coins therein found, which he reasonably suspects to be stolen, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid.

Magistrate may attend personally.

378. The Magistrate by whom a search-warrant is issued may attend personally for the purpose of seeing that the warrant is duly executed.

Magistrate may direct search in his presence.

The Magistrate may also direct a search to be made in his presence of any house or place for the search of which he is competent to issue a search-warrant.

Search by officer in charge of Police-station.

379. Whenever an officer* in charge of a Police-station, or a Police officer making an investigation,† considers that the production of anything is necessary to the conduct of an investigation† into any offence which he is authorized to investigate,† he may search or cause search to be made for the same, in any house or place within the limits of the station of which he is in charge or to which he is attached.

* S. 137.

† S. 4.

In such case, the officer in charge of the Police-station or Police officer making investigation† shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, the officer* in charge of

CH. XXVII. ss. 379, 380.

the Police-station, or Police officer making investigation,* may require any officer subordinate to him to make the search; and he shall deliver to such subordinate officer an order in writing, specifying the property for which search is to be made and the house or place to be searched, and such subordinate officer may thereupon search for such property in such house or place.

* S. 4.

The provisions of sections three hundred and eighty-two to three hundred and eighty-five (both inclusive), relating to search-warrants, shall be applicable to a search made under this section, by or under the direction of an officer in charge of a Police-station, or by a Police officer making an investigation.

It is to be apprehended that making a search is sometimes the first instead of being the last step in the investigation, and that the houses are searched on the mere assertion of the plaintiff that he suspects the owner, although there may be in the circumstances of the case nothing whatever to give rise to a reasonable suspicion of his guilt. By such a procedure suspicion may be cast upon an innocent individual, and the feelings of respectable persons may be wantonly outraged. (C. P. Book Cir. VII of 1867.)

A Magistrate issuing a search warrant is not bound to specify the property, place, &c., which is to be searched, but a Police officer *is bound to do so*, and cannot issue a general search-warrant.

When officer of Police-station may require another to issue search-warrant.

† S. 137.

380. An officer† in charge of a Police-station may require an officer in charge of another Police-station, whether subordinate to the same Magistrate as himself or to a Magistrate‡ of another District, to cause a search to be made in any house or place in any case in which the former officer might cause such search to be made within the limits of his own station.

‡ S. 35.

Such officer, on being so required, shall proceed according to the provisions of section three hundred and seventy-nine, and shall forward the thing found, if any, to the officer at whose request the search was made.

Inspection of weights and measures.

381. An officer* in charge of a Police-station may, without a warrant, enter any shop or premises within the limits of such station, for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are, in such shop or premises, any weights, measures or instruments for weighing which are false.

* S. 4.

If such officer finds, in such shop or premises, any weights, measures, or instruments that are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate† having jurisdiction.

† Chap. VI.

The Bombay Regulations (XII, 1817, s. 20) direct that all weights and measures used in retail dealing throughout a Magistrate's jurisdiction should be represented by a standard weight in his office, and such standards be accessible to all persons who wish to examine them.

Persons in charge of closed house to allow search.

382. Whenever any house or place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such house or place shall, on demand of the officer or other person executing the warrant, allow such officer or other person free ingress thereto, and afford all reasonable facilities for a search therein.

Place to be searched may be broken open.

383. A Police officer or other person, authorized by a warrant to search any house or place, may break open any outer or inner door or window of such house or place, in order to execute the warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of zenana.

384. If the place ordered to be searched is an apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the officer or other person charged

with the execution of the warrant shall give notice to such woman in such apartment, not being a woman against whom a warrant of arrest has been issued, that she is at liberty to withdraw.

After giving such notice and allowing a reasonable time for such woman to withdraw, and affording her every reasonable facility for withdrawing, such officer or person may enter such apartment for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

Search to be made in presence of witnesses.

385. Before conducting a search under this Chapter, the officer conducting it shall call upon two or more respectable inhabitants of the place in which the house or place to be searched is situate, to attend and witness the search.

The search shall be made in their presence, but they shall not be required to attend the Court of the Magistrate as witnesses, unless specially summoned by him.

Occupant of place searched may attend.

The occupant of the house or place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

Respectable persons should always be called upon to prevent any imputation being cast on the Police. These witnesses should, however, never be summoned to Court, save when it may be imperatively necessary. If doubt is thrown by the accused on the search, it will be in his power to ask for their being summoned.

Mode of searching women.

386. Whenever it is necessary to cause a woman to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

Search of arrested persons.

387. Whenever a person is arrested by the Police under a warrant which does not provide for the taking of bail,* or under a warrant which provides for the taking of bail, but the arrested person cannot furnish bail,

* S. 388.

or is arrested without warrant and is not admitted to bail,

it shall be the duty of the arresting officer to search such person and to place in safe custody all articles, other than necessary articles of apparel, found on such person.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

See Appendix, "Malkhanah."

Notes by Select Committee on Chap. XXVIII.

We have empowered the Court of Session in all cases to direct the admission of accused persons to bail.

PART IX.

PROCEDURE INCIDENTAL TO INQUIRY AND TRIAL.

CHAPTER XXVIII.—ss. 388—399.

BAIL.

When bail shall be taken.

388. When any person appears or is brought before a Magistrate* accused of any bailable† offence, he shall be admitted to bail.

* S. 6, n.
† Sched. IV.

Bail under this section is a right which belongs to the accused, not a favor which may be extended to him.

The bail required should always be in proportion to the means and station in life of the accused: the amount should always be endorsed on the back of the warrant of commitment to jail (or that of arrest), with the offence charged, and the section under which punishable, that the friends of the accused may know it and be able to make provision for procuring it. S. 399 allows a deposit to be made in lieu of bail. The bail should be, when not deposited in money, recorded in the form given below; and if the accused is not in arrest, it should have affixed to it a Court fees' stamp of the value of eight annas. Each person standing surety should execute his or her bail-bond separately: one form signed by two or more persons is irregular. The Calcutta High Court Circular 15, 1864, direct that it is not fitting that the Police should be employed in inquiries as to the sufficiency, or otherwise, of the security offered, as such inquiries tended to prolong the detention in jail of the accused person offering the security. The Court stated that it is the duty of a Magistrate to satisfy himself that the sureties are, in point of substance, persons of whom it may reasonably be presumed that

they can, if necessary, satisfy the terms of the bail-bond. Similarly, Jud. Com., Oudh, Cir. Ord. 65, 1864; Cen. Prov., XXV, 1864; Punj., VII, 1865.

See also ss. 391, 399.

Form of Bond.

I, A B of C D, hereby bind myself to produce E F at the Court of on next, at o'clock; and in default of my so doing, I bind myself to forfeit to Her Majesty the sum of rupees.

(Signed) A B.

In the presence of
G H and J J.

Bail not to be taken for certain offences.

389. When any person accused of any non-bailable offence appears or is brought before a Magistrate,* such person shall not be admitted to bail, if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

* S. 6, n.

When bail may be taken.

If the evidence given in support of the accusation is, in the opinion of the Magistrate, not such as to raise a strong presumption of the guilt of the accused person,

or if such evidence is adduced on behalf of the accused person as, in the opinion of the Magistrate, weakens the presumption of his guilt, but there appears to the Magistrate in either of such cases to be sufficient ground for further inquiry into his guilt,

the accused person shall be admitted to bail† pending such inquiry.

† S. 388.

A Magistrate should not ask for bail (when after inquiry no offence is made out against the accused) in the hope that evidence may turn up eventually. (B. L. R., I, App., 26.)

Power to direct admission to bail.

390. The Court of Session may in any case, whether there be an appeal on conviction or not, direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

Thus, in *all cases*, even those *not appealable*, the Court of Session can admit to bail.

Recognizance of accused and sureties.

391. When a Magistrate admits to bail any person accused or suspected of any offence, a recognizance, in such sum of money as the Magistrate thinks sufficient, shall be entered into by the person so accused, and one or more sureties, conditioned that such person shall attend at the time and place mentioned in the recognizance, and shall continue to attend until otherwise directed by the Court, and, if required, shall appear when called upon at the Court of Session or other Court, as the case may be, to answer the charge.

Should the accused be under arrest, these recognizances may be executed on plain paper, otherwise they should bear a Court fees' stamp of eight annas impressed on them.

They should be drawn up in a form like the following :—

I, , of , do hereby bind myself to appear at , in the Court of , at o'clock, on the day of next; and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees.

Recognizances should be fixed according to the position in life and condition of the accused. If broken, they are forfeited, and are recoverable as shown in s. 398: besides this, a criminal action against the defaulter will lie under s. 174, P. C. (W. R., X, 4.)

A Magistrate is bound to satisfy himself that the sureties are persons able to liquidate the amount mentioned in the bail-bond, if necessary; but he should refrain from harassing the Police by making unnecessary inquiries. (Jud. Commr., Oudh, 65 of 1864; Cen. Prov., 25 of 1864; Punj., VII of 1865; Cal. H. Ct. Cir. Ord., 15 of 1864.)

Insufficient bail.

392. If, through mistake or fraud, insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused person may be ordered by the Magistrate (*a*) to give sufficient bail or to find sufficient sureties, and, in default, may be committed to prison.

(*a*). The Magistrate having jurisdiction in the particular case in question.

Bail may be taken at any time before conviction.

393. If the accused person cannot find sureties when called upon, he shall be admitted to bail upon finding the same at any time afterwards before conviction.

Discharge on bail.

394. After the recognizances have been duly entered into, the Magistrate,* in case the accused person has appeared voluntarily, or is in the custody of some officer, shall thereupon release him; and in case he is in some prison or other place of confinement, shall issue a warrant of release to the jailor or other person having him in his custody, and such jailor or other person shall thereupon release him.

* S. 6, n.

Discharge of sureties.

395. Any one or more of the sureties for an accused person may, at any time, apply (*a*) to the Magistrate† (*b*) to be discharged from their engagements.

† S. 6, n.

(*a*). A Court Fees stamp of eight annas should be attached to the application. Act VII 1870, Sched. II (1).

(*b*). The Magistrate having jurisdiction is the proper person to apply to.

On such an application being made, the Magistrate† shall issue his warrant‡ of arrest, directing that such person be brought before him.

‡ S. 159.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties, and, in default, may order him to be committed to prison.

Procedure to compel payment of penalty by accused.

396. Whenever, by reason of default of appearance of the person executing the personal recognizance, the Magistrate is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty, by issuing a warrant for the attachment and sale of the moveable property belonging to such person, which may be found within the jurisdiction of the Magistrate‡ of the District. Such warrant may be executed within the jurisdiction of the Magistrate§ of the District, and it shall authorize the distress and sale of any moveable property belonging to the accused person without

the jurisdiction of the said Magistrate, when endorsed by the Magistrate* of the District in which such moveable property is situated.

* S. 6, n.

Procedure to compel payment of penalty by sureties.

397. Whenever, by reason of default of appearance by the person bailed, the Magistrate is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice (*a*) to the surety or sureties to pay the same, or to show cause why it should not be paid (*b*).

(*a*). This should appear clearly on the record. (Khoodee Koiburtnee, S. W. R., XV, 82; See also Doorgadass Bhuttacharjee, S. W. R., XV, 82.)

(*b*). Where a surety conditioned that he would be responsible for the continued presence of an accused person at one Court (Nowadah), it was held that the surety was released from liability, under his recognizance by the permission which the Court at Nowadah gave the accused, without the surety's consent, of leaving that place on business, and also by the subsequent transfer of the case to another Court (Gya). (Mewa Lal, W. R., XIII, 53.)

If such penalty be not paid, and if no sufficient cause for its non-payment be shown, the Magistrate shall proceed to recover the penalty (*c*) from such surety or sureties, by issuing a warrant for the attachment and sale of any moveable property belonging to him or them which may be found within the jurisdiction of the Magistrate† of the District. Such warrant may be executed within the jurisdiction of the Magistrate† of the District; and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate† of the District in which such moveable property is situated.

† S. 35.

(*c*). Penalty recovered from a surety does not release the accused from his liability to punishment under s. 174.

If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the Civil jail, during a period not exceeding six months.

CH. XXVIII. ss. 398, 399.

In what cases the powers given by sections 396 and 397 may be exercised.

398. The powers given by sections three hundred and ninety-six and three hundred and ninety-seven may be exercised by every Criminal* Court in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court according to the conditions of such recognizance or bail:

* S. 4.

Remission of part of penalty.

Provided that the Magistrate or Court may, at his or its discretion, remit any portion of the penalty mentioned in the recognizance of the accused person, or of the surety or sureties, and enforce payment in part only:

Revision of orders.

All orders passed by any Magistrate, other than the Magistrate† of the District, under this section or section three hundred and ninety-six or three hundred and ninety-seven, shall be appealable to the Magistrate† of the District, or, if not so appealed, may be revised by him.

† S. 35.

High Court or Court of Session may direct Magistrate to levy sum forfeited.

A High Court or a Court of Session may direct any Magistrate to levy the amount due on a forfeited bail-bond executed in respect of attendance before such High Court or Court of Session.

See especially note to s. 360.

Deposit may be made instead of bail.

399. When any person is required by any officer or Criminal‡ Court to give bail, except in cases coming under Chapter XXXVIII, such officer or Court may permit such person to deposit a sum of money or Government promissory notes to such amount as it may fix in lieu of such bail.

‡ S. 4.

Chapter XXXVIII refer to security for good behaviour.

Notes by Select Committee on Chap. XXIX.

On the formation of lists of assessors and jurors, we have provided that the Sessions Judge shall sit with the Collector. We have exempted all officers in Civil employ superior in rank to a Magistrate of the District, and have given power to the Local Government to exempt any person from liability to serve as a juror or assessor.

CHAPTER XXIX.—ss. 400—414.

Formation of Lists of Jurors and Assessors and their Attendance.

List of jurors and assessors.

400. The Sessions Judge and the Collector of the District, or such other officer as the Local Government from time to time appoints in this behalf, shall prepare and make out in alphabetical order a list of persons residing within ten miles from the place where trials* before the Court of Session are held, or within such other distance as the Local Government thinks fit to direct, who are, in the judgment of the Sessions Judge and Collector or other officer as aforesaid, qualified from their education and character to serve as jurors or as assessors, respectively. * S. 4.

The list shall contain the name, place of abode, and quality or business of every such person; and if the person is a European or an American, the list shall mention the race to which he belongs.

In non-regulation provinces, the Deputy Commissioner has to frame the list. Neither Deputy Commissioner nor Collector is allowed any choice in the matter; but must include every person qualified to serve, whatever be his nationality. All officials, save those specially exempted in ss. 405 and 406, are bound to serve when called upon. A Sessions Judge cannot order a Collector to strike out certain assessors from the list, but where he thinks certain assessors are not qualified, he should proceed under s. 402. Pleaders are not exempt, but if a sufficient number of persons can be found, it is inexpedient to use them as either jurors or assessors.

Publication of list.

401. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid and in the Court-houses of the Magistrate† of the District † S. 35.

and of the Chief Civil Court, and in some conspicuous place in the town or towns near or in the vicinity of which the persons named in the list reside.

To every such copy shall be subjoined a notice, stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

402. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may avail himself of the exemption from service given by section four hundred and six, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid, in preparing and revising the list, shall be final.

Annual revision of list.

403. The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Jurors and Assessors.

404. All male persons between the ages of twenty-one and sixty, resident within the local limits of the

jurisdiction of the Court of Session, except those hereinafter mentioned, shall be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

Disqualifications.

405. The following persons are incapable of serving as jurors or as assessors, namely :—

Persons who hold any office in or under the said Court:

Persons executing any duties of Police or entrusted with any Police functions:

Persons who have been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Sessions Judge and Collector, renders them unfit to serve on the jury:

Persons afflicted with any infirmity of body or mind, sufficient to incapacitate them from serving:

Persons who, by habit or religious vows, have relinquished all care of worldly affairs.

Exemption.

406. The following persons are exempt from the liability to serve as jurors or as assessors, namely :—

All officers in Civil employ superior in rank to a Magistrate* of the District:

* S. 35.

Judges and other Judicial officers:

Commissioners and Collectors of Revenue or Customs:

All persons engaged in the Preventive Service in the Customs Department:

All persons engaged in the collection of the revenue, whom the Collector thinks fit to exempt on the ground of official duty:

Chaplains and others employed in religious offices:

All persons in the Military Service, except when, by any law in force for the time being, such persons are specially made liable to serve:

Surgeons and others who openly and constantly practise in the profession of physic:

Persons employed in the Post Office and Electric Telegraph Departments:

Persons actually officiating as priests in their respective religions:

All persons exempted by the local Government; and persons exempted by Government from personal appearance in Court, under the provisions of the Code of Civil Procedure, section twenty-two.

Person exempted is not bound to avail himself of his right of exemption.

The exemption from service given by this section is a right of which each person exempted may avail himself or not.

Nothing contained in this section shall be construed to disqualify any such person, if he is willing to serve as a juror or as an assessor.

The Sessions Judge may issue a summons to any exempted person, to serve as an assessor or juror on the trial of a European* British subject.

* S. 71.

The exemption of persons in the Military service does not extend to persons summoned by the Chief Court, Panjab, unless the Commanding Officer shall desire to have them excused, on the ground of urgent Military service, or for any special Military reason. (Act IV, 1866, s. 30.)

S. 22, Act VIII, 1859, enacts that the Government may, at its discretion, exempt from personal appearance in Court any person whose rank, in the opinion of the Government, entitles him to the privilege of exemption, and may at its discretion withdraw such privilege. The names of the persons so exempted (if any) residing within the jurisdiction of the principal Civil Court of each district, shall from time to time be forwarded to such Court by the local Government, and a list of such persons (if any) shall be kept in such Court and in the several subordinate Courts of the District.

Court to summon jurors.

407. The Court of Session shall ordinarily, three days at the least before the time fixed for the holding of the Sessions, send a precept to a Magistrate directing him to summon as many persons named in the said revised list as seem to the Court to be needed for trials by jury and trials with the aid of assessors at the said Sessions, the number to be summoned not being less than double the number required for any case about to be tried at such Sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; the names so drawn shall be specified in the precept to the Magistrate.

"Any," *i. e.*, any one case, see Appendix, "Jury."

408. When a trial* is to be held in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section two hundred and thirty-four, the Court of Session shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinafter prescribed, as many European and American jurors as are required for the trial,* if there be so many on the Jury-list of the District in which the trial is to be held.

* S. 4.

Summoning and empannelling jurors under section 234.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons shall have been already summoned for jury trials at that Session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be taken by lot in the manner prescribed in section two hundred and forty, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained.

If a jury containing the requisite number of Europeans and Americans is not obtained, the accused person may elect to be tried* by the Judge with the aid of assessors; otherwise he shall be tried* by the jury obtained by the means aforesaid.

Section 234 provides for the trial of Europeans or Americans.

409. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror

Form and service of summons.

or assessor at a time and place to be therein specified.

The summons or a copy thereof shall be served on every juror or assessor personally.

If the juror or assessor summoned be absent from his usual place of abode, the summons may be left for him there, with some adult male member of his family residing with him.

Power to summon another set of jurors or assessors.

410. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified (*a*) in section four hundred and seven, when the number of trials* before the Court renders the attendance of one set of jurors or assessors for a whole Session oppressive, or whenever it is found to be necessary.

* S. 4.

(*a*). Three days at least before the beginning of Sessions.

Service of summons on officer of Government.

411. If any person summoned to serve as a juror or assessor be in the service of Government or of a Railway Company, the summons shall be sent to him through the head officer of the office in which he is employed; and the Court (*a*) may excuse the attendance of such person if it appear, on the representation of such head officer, that the person summoned cannot serve as a juror or assessor without inconvenience to the public service.

(*a*). Court of Session, not the Magistrate to whom the precept (s. 407) is issued.

Court may excuse attendance of juror or assessor.

412. The Court of Session may excuse any juror or assessor from attendance for reasonable cause.

List of jurors or assessors attending.

413. At each Session, the Court shall cause to be made a list of the names of those who serve as jurors or assessors at such Session.

Such list shall be kept with the revised list of the jurors and assessors prepared under section four hundred and two.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

414. Any person summoned to attend as a juror or as an assessor, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the Magistrate of the District, by attachment and sale of any moveable property belonging to such juror or assessor within the jurisdiction of the Sessions Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may be imprisoned in the Civil jail for the space of fifteen days, if the fine be not sooner paid.

No appeal from this order. The Judge may, however, reconsider it, if good cause be shown. (W. R., VII, 83, Gour Sarun Doss.)

CHAPTER XXX.—ss. 415—422.

Miscellaneous Provisions.

Procedure by Police upon seizure of stolen property.

415. The seizure by any Police officer of property alleged or suspected to have been stolen,* or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall thereupon make such order respecting the custody and production of such property as he thinks proper.

* S. 410, P. C.

Sale of perishable property.

If such property is of a perishable nature, or if it appears to the Magistrate that its sale would be for the benefit of the owner, such Magistrate may at any time direct it to be sold, and shall hold the proceeds of such sale in trust for the owner, subject to the provisions contained in sections four hundred and sixteen and four hundred and seventeen.

In N. W. P., by Pol. Order 31 of 1861 and Pol. Cir. Order 7 of 1867.

5. A Register to be called the "Malkhanah Register," will be kept of all properties delivered into custody of Police.

7. The Register should be examined once a month by District Superintendent to see that property is not kept in Malkhanah longer than necessary. The Magistrate should be reminded of properties placed with the Police, and orders relative to disposal obtained on final decision of case, or wherever injury, decay, or damage will result by keeping such in store.

Property thus seized by the Police should be entered in the Register of Stolen and Unclaimed Property. If brought to sale it should be disposed of by the Nazir or Naib Nazir, who receives a regular commission on the amount sold for the performance of this duty. The following rate is allowed him in the Cen. Prov. Book Cir. I of 1870:—

I.—Negotiable securities, shares, &c.	Current brokerage, plus any further actual proper expenses.
II.—Immoveable property.	Re. 1-9-0 per cent. on sale proceeds, with a maximum limit of Rs. 32 on account of each sale separately ordered by the Court; or, in case the actual expenses properly incurred exceed Rs. 32, then those expenses audited by the Court.
III.—Moveable property and debts.	Rs. 3-2-0 per cent. on sale proceeds, without limit.

All property thus seized or found should at once be reported to the Magistrate and duly entered in the above-named Register. See Appendix, "Malkhanah."

Procedure where owner of property seized unknown.

416. When the owner of any such property is unknown, the Magistrate may detain it, or the proceeds thereof, if sold, and, in case of such detention, shall issue a proclamation, specifying the articles of which such property consists or consisted, and requiring any person, who may have a claim

thereto or to the proceeds thereof, to appear before him and establish his claim within six months from the date of such proclamation.

See Appendix, "Malkhanah."

Police may forward intestate property to the Civil Court getting a receipt for the same, which they should forward to Magistrate, but otherwise Magistrates and Police Officers are never to interfere with it (S. N. A. Agra, 9 of 1864), nor with (O. Pol. Cir. 20-9 of 1871) moveable property found, of which the owner cannot be discovered, such property belongs to the finder, who may, however, be guilty of a criminal offence, if he has the means of finding out, or does not take reasonable means to find out the owner.

In cases where a Police Officer is the finder, or a finder voluntarily deliver up property found to the Police, the usual procedure of bringing the property on to the Malkhanah register and taking the Magistrate's order, &c., will be followed.

Procedure if no claimant appears within six months.

417. If no person within such period establishes his claim to such property or proceeds, and if the person, in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Magistrate* of the District, or a Magistrate† of a Division of a District, or, if duly authorized, a Magistrate‡ of the first class; or, if it has been already sold by the Magistrate, the proceeds thereof shall be at the disposal of the Government.

* S. 35.
† S. 40.
‡ S. 27.

An appeal shall be allowed to the Court (*a*) to which appeals against sentences would lie, in the case of every order passed under this section.

(*a*). To the Court of Sessions of the District in which the property is sold, unless the Magistrate of the Division of the District be a 2nd grade Magistrate, when the appeal would lie to the Magistrate of the District.

Order for disposal of property regarding which offence committed.

418. When the trial§ in any Criminal Court is concluded, the Court may make such order as appears right for the disposal of any property, produced before it, regarding which any offence appears to have been committed.

§ S. 4.

See Appendix, "Malkhanah."

Stay of such order.

419. Any Court of Appeal, Reference, or Revision may direct any such order passed by a Court subordinate thereto to be stayed, and may modify, alter, or annul it.

Order may take form of reference to Magistrate of District.

420. The order, passed by any Court under section four hundred and eighteen or four hundred and nineteen, may be in the form of a reference of the property to the Magistrate* of the District, or to a Magistrate† of a Division of a District, who shall in such cases deal with it as if the property had been seized by the Police and the seizure had been reported to him in the manner hereinbefore mentioned.

* S. 35.

† S. 40.

Expenses of complainants and witnesses.

421. Subject to any rules that may be passed by the Local Government, with the previous sanction of the Governor-General of India in Council, the Criminal Courts may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purpose of any trial before such Court under this Act.

Rules have been made in the N.-W. Provinces, Central Provinces, Oudh, and Panjab for the payment of complainants and witnesses.

In the N.-W. Provinces, complainants and witnesses will receive their expenses according to the annexed table:

(1). In cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government or any Judge, Magistrate, or other public officer.

(2). In cases in which it shall appear to the presiding officer to be directly in the furtherance of the interests of the public service.

(3). In all non-bailable cases.

(4). In all cases in which witnesses are compelled to attend under the provisions of s. 351, *viz.*, *necessary witnesses summoned by the Magistrate of his own motion*, not such witnesses as the parties apply to have summoned in proof of their case.

TABLE OF RATES OF PAYMENT.

CLASS I.—*Ordinary labouring class of Natives:* 2 annas per diem and actual railway fare by lowest class.

CLASS II.—*Natives of higher rank:* 4 annas per diem and 3rd class railway fare.

CLASS III.—*European and others not being natives:* Not more than Re. 1 per diem and 2nd class railway fare.

CLASS IV.—*Professional Witnesses, as of Medicine, Law, &c.:* Special allowance according to circumstances.

CLASS V.—*Government Servants:* Actual travelling expenses only.

The number of days for passage to and fro to be decided by the officer ordering payment in the case. A table should be prepared and hung in each Court showing—

1st,—Distance of each thanah from the Sudder Station and subordinate Stations.

2nd,—Number of intermediate ferries to be crossed.

3rd,—Existence or absence of roads or water-ways.

In the Central Provinces payment is *not* to be made to—

(1) Recusant complainants and witnesses—*Vide* ss. 131 and 360.

(2) Complainants whose expenses are covered by an award under s. 308, *q. v.*

(3) Witnesses already in attendance or produced by parties—*vide* ss. 207 and 351—unless the Court shall see good reason for ordering payment.

(4) Complainants appearing as such of their own accord and not under order of the Court.

Payment is *never to exceed* the following scale :—

CLASS I.—*Europeans and Eurasians of the higher classes and natives of distinction:* R. 5 per diem.

CLASS II.—*Non-Official Europeans or Eurasians of the middle class, and Native gentlemen of the higher classes:* Rs. 3 per diem.

CLASS III.—*Other Europeans and Eurasians and better class of Natives as Zamindars, petty tradesmen, &c.:* Re. 1 per diem.

CLASS IV.—*Natives of lower class, but of some status, such as inferior Zamindars, &c.:* Annas 4 per diem.

CLASS V.—*All ordinary natives:* Annas 2 per diem.

CLASS VI.—*Government Officers:* As in N.-W. Provinces.

The Court has absolute power to determine to which class a man belongs.

Every witness to receive a day's allowance for every 12 or part of 12 miles, he has to travel (by dâk or on foot (presumably) but not by rail?).

Where witnesses may have to attend a second time, the Court should determine whether they are to remain where the Court sit, or whether they should, in the *interim*, return to their own homes. In the former case, they will be entitled to subsistence allowance for every day they are detained; in the latter, to expenses for the journey to and from Court. At the close of every day the Magistrate should attest the Diary, by affixing thereto the initials of his name, and satisfying himself that the amount of diet-money entered has been actually paid to the witnesses. (Book Cir. III of 1868.)

For Panjab and Oudh rules, which are almost identical with those of the Central Provinces, see Panj. 123 of 1862, and Oudh Cir. Order 21 of 1862.

G. O. No. 2940 of May 1868, followed in Bengal and the Panjab, is to this effect, that, when a Government officer attends a Criminal Court as a witness, reasonable expenses may be allowed him without reference to ordinary travelling allowance rules, and that such be charged to "Law and Justice" (Panj. Pol. Cir. 40 of 1868.)

It is the duty of Civil Surgeons to attend Criminal Courts to give evidence, and neither can they claim, nor a Criminal Court give them, travelling allowance for such a purpose. If they have to go more than five miles, they are entitled to travelling allowance under Resolution, Government India, dated 26th April 1872. (Panj. Book Cir. III of 1872.)

CH XXX. s. 421.

No claim to be presented on behalf of a policeman for reasonable expenses incurred in attending a Court, unless the man has been obliged to incur extra expenditure by his journey to Court, and to stay at a station other than that where he is employed. (Panj. Pol. Cir. Memo. 3333 of 1869.)

For rules relative to keeping up of a Witness Register, see n. to s. 351.

In the Panjab, the Court Inspector is responsible for making inquiry of parties whether they have received payment or have any complaints to make; but District Superintendents or their Assistants should satisfy themselves that the money has been duly disbursed. In the Tehseel this duty devolves on the Naib Court Inspector. Officers in charge of stations should take care that these allowances are paid, and the parties saved all possible trouble and inconvenience. (Panj. Pol. Cir. 22 of 1871.)

In Oudh, stringent rules are given that subsistence money be always paid to witnesses in heinous criminal cases at the rates prescribed from the day they leave their home to the day they return.

The classes and rates are the same as those prescribed for the Central Provinces.

Diet-money paid to witnesses under these rules is to be shown thus:—

Date of Dismissal.	Two Annas			Four Annas.			One Ruppe.			Three Ruppees			Five Ruppees.		
	No. of Persons.	No. of Days for which to receive.	Amount paid.	No. of Persons.	No of Days for which to receive.	Amount paid.	No. of Persons.	No. of Persons for which to receive.	Amount paid.	No. of Persons.	No. of Persons for which to receive.	Amount paid.	No. of Persons.	No. of Persons for which to receive.	Amount paid.
			Rs. As P.												
January 1st ..	25	1	3 2 0												
	14	2	3 8 0												
	3	12	4 8 0												
Total ..	42	15	11 2 0												
January 2nd..															

The Police Officer will enter on the back of the report, required to be forwarded by S. 127, the date on which each witness was taken from his home or ordinary avocations, the class to which he belongs, and the diet-money which has been paid to him in advance to enable him to reach the Court.

At the close of each case, the presiding officer will either himself calculate, or cause another person to calculate, in his presence, the amount due to each witness, reckoning from the day on which he was taken from his home to the day on which he may be expected to

return after having been dismissed from the Court, both days inclusive; and after deducting the advance paid by the Police Officer, the accuracy of which should always be ascertained by personal inquiry from the person said to have received it, will hand him the balance, the entire transaction being recorded, at the same time, in this form. The form should be indented for and kept in books, one book for each class, and, at the close of each day's proceedings, the books should be made over to the Munsarim, who will prepare from them the statement prescribed in the preceding paragraph. This to be done daily in each Court.

Date.	Name of Witness.	Class.	Total in Number of Days for which to receive Diet.	Total Amount due.	Amount paid in Advance by Police.	Balance due.	Paid in my Presence.
				Rs. As. P.	Rs. As. P.	Rs. As. P.	
1st January.	Seetaram.	2 as.	15	1 14 0	0 14 0	1 0 0	

It is necessary particularly to bear in mind that, in making these calculations, no fractions of days are to be allowed, and that twelve miles is the ordinary distance which a person should be expected to travel daily. He should be paid for the day on which he left his home, no matter whether he was not called on to leave it until a late hour in the afternoon, and he must also be paid for the day of his return, even though he may arrive at an early hour in the morning. The distance, however, may be differently calculated, for there can be no hardship in expecting a witness to travel six miles in the evening of the day on which he was summoned from his home, or the same distance on the evening of his discharge from attendance at Court. For example, if a man's dwelling be within a radius of six miles from the Court, he should, on the recognizance to appear being taken from him, only receive one day's diet-money from the Police, as he may be expected to accomplish the distance which separates him from the Court on that day. If his residence be more than six, but less than eighteen miles from the Court, he should be given two day's diet-money, because he may be required to travel six miles on the day on which he was summoned from his home and the remaining twelve on the following day. If, however, his house be nineteen miles off, he should receive diet for three days, for he could only be expected to travel six miles on the first day, and twelve on the second, leaving one mile to be accomplished on the day or which he has to appear.

The time occupied in his return will be calculated in the same manner,—that is to say, a witness may be expected to travel six miles towards his home on the evening of the day of his dismissal from attendance before the Magistrate. If, therefore, he lives within six miles from the place where the Court is held, he should receive only one day's diet-money, and so on as before. These instructions have reference only to the time occupied by witnesses in going and coming, and they should receive the diet-money due to their class for each additional day that they may be kept in attendance by the Court. Though twelve miles is the ordinary daily distance, circumstances may

arise, especially in the rainy season, under which it may be impossible for a man to accomplish that distance in a day, and in such cases, additional payments must be made accordingly.

These rules will apply to all Sessions cases and to witnesses for the prosecution in warrant cases, but to witnesses for the defence, in those warrant cases only in which the Magistrate does not consider it necessary to act on the discretionary power granted him by s. 362 of requiring deposit of the expenses of a witness before summoning him.

Instances having occurred in which a Magistrate has refused to advance diet-money for a prisoner who has been brought before him prior to being challaned to the district in which his alleged offence was committed, and directed the Police Officer to take his own steps for the recovery of the same from the Magistrate of that district, Magistrates are instructed in all cases, in which challans are sent to a different district to advance the necessary diet-money and to recover it from the Magistrate to whom the prisoner is forwarded. The matter is one of detail, which can be more fitly executed by the Magistrate than by the Police Officer.

When a case is received at head-quarters on Saturday or a holiday, and in consequence cannot be sent up for trial at once, the diet-money of prisoners and witnesses advanced by the Station Police Officer will be repaid by District Superintendent to the constables who have brought in the case, who will be returned at once to their Station, and District Superintendent will at the same time cause the diet-money for the number of days the case will be delayed to be paid to the witnesses who have been sent in.

To meet these payments the Deputy Commissioner will make a permanent advance to the District Superintendent of Police of such sums as he may deem sufficient. From this advance the payments are to be made, and will be recovered by Head-quarters Inspector from the Court to which the case is sent for trial. Witnesses must always be paid in the presence of the Head-quarters Inspector, who will certify on the Charge-sheet the amount paid to each individual, and that the payments were made in his presence. (Oudh Pol. Cir. 12-6 of 1870.)

Rules for Travelling Allowances, &c., of Complainants and Witnesses attending at the High Court, Allahabad.

Europeans and Eurasians are to be divided into three classes.

Care should be taken by Magistrates despatching such persons that they are correctly classified according to their respective stations in life.

Travelling expenses of all classes, Europeans and Natives, at these rules:—

By Rail or Dâk.

1ST CLASS.—Actual of 1st class passage.

2ND, 3RD CLASS.—*Bonâ fide* expenses of 2nd and 3rd classes.

Allahabad: Conveyance Hire for the days of actual attendance at the High Court.

1ST CLASS.—Rs. 2
2ND CLASS.—Re. 1 } per diem.

3RD CLASS.—As per preceding rules.

Whenever practicable, prosecutors and witnesses should travel by rail.

The boarding allowance at Allahabad will cease from the day on which the trial terminates.

Interpreter to be bound to interpret truthfully.

422. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Notes by Select Committee on Chap. XXXI.

We have provided, in the case of criminal lunatics, that it shall rest with the Local Government to decide whether a criminal lunatic, who is pronounced harmless by a Commission, shall or shall not be released.

For notes on Criminal Insanity, see Appendix, "Criminal Insanity."

CHAPTER XXXI.—SS. 423—434.

LUNATICS.

Procedure in case of accused being lunatic.

423. When any person charged with an offence before a Magistrate, competent to try* the case, appears to such Magistrate to be of unsound mind and incapable of making a defence, such Magistrate shall institute an inquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District, or some other medical officer, and thereupon shall examine such Civil Surgeon or other medical officer as a witness, and shall reduce the examination into writing.

If such Magistrate is of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

* S. 4.

In the N.-W. Provinces (Cir. Order 60A of 1867), it is the duty of the Police to take charge of dangerous lunatics, and convey them before a Magistrate. It is the duty of the Magistrate to transfer such lunatics to a lunatic asylum, and in the interval to provide for their safe custody; during transit, they would naturally be under the charge of the Police.

It is for the Magistrate to determine where such lunatics shall be detained, if detention is necessary; whether in the jail, or in separate cells—when these have been provided—or elsewhere; and he would provide accordingly for their safe custody, as well as for requisite attendance; the latter, of course, is not expected from the Police, but for the former, if necessary, the Police should be employed as for any other guard duty for which the Military or Police Burkundâzes were formerly employed, and which is quite distinct from Police duty as a constable. As a rule, dangerous lunatics should be confined in jail.

It is not at all desirable that lunatic cells should be attached to any dispensary, as they would very probably affect the popularity of that institution; but such questions must ordinarily be left to the good sense and discretion of the Magistrate.

When accused appears to have been insane.

* S. 4, n. (*d*).

424. When, from the evidence* given before a Magistrate, there appears to be sufficient ground for believing that the accused person committed an act which, if he had been of sound mind, would have been an offence triable† exclusively by the Court of Session, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, such accused person shall, if he appears to be sane at the time of inquiry,‡ be sent for trial by the Magistrate before the Court of Session.

† Sched. IV.

‡ S. *.

§ S. 71.

If such accused person is a European§ British subject, the Magistrate shall follow the procedure prescribed in Chapter VII.

If an accused person appears to be insane at the time of inquiry, the Magistrate shall act in the manner provided in the last preceding section.

Procedure in case of person committed before a Court of Session being lunatic.

‖ S. 196.

¶ S. 4.

425. If any person, committed‖ for trial before a Court of Session, shall, at his trial,¶ appear to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial¶ shall be postponed.

If a Sessions Judge entertains doubts as to the sanity of an accused person, he should not merely question him, but should try the fact by examining the Civil Surgeon or some Medical Officer, and also take evidence, where possible, from the village where the accused resided, and thus endeavour to ascertain whether the accused had at any time prior to the commission of the offence exhibited symptoms of insanity. (Bomb. 1, 33, Heera Poonja.)

This section cannot be held to authorize Courts to try, as a preliminary point, before proceeding with the trial, whether the prisoner was of unsound mind at the time of committing the offence. This is an issue, among others, on which the finding as to the guilt or innocence of the prisoner depends, and is therefore one for determination at the conclusion of the trial. The only circumstances under which the question of unsound mind should be preliminarily decided, are those described in this and the preceding sections, with the view of determining whether the prisoner is capable of making his defence. (S. N. A., Agra, Mt. Lounaee, 1862, 53.)

Release of lunatic pending investigation or trial.

426. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session, as the case may be, if the offence of which such person is accused be bailable,* may release such person on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required.

* Sched. IV.

Custody of lunatic.

If the offence be not bailable, or if the required bail be not given, the accused person shall be kept in safe custody in such place as the Local Government, to which the case shall be reported, shall direct.

The Chief Commissioner of Oudh and of the Central Provinces have been invested with the powers of a Local Government under this section. See n., s. 430.

The Rules for conveyance of Lunatics to Asylums in Lower Bengal are as follows:—

1. Wherever practicable, water shall be preferred to land carriage.
2. No lunatic shall be sent from a jail, or other place in which he is temporarily confined for safe custody, to a Lunatic Asylum, when he is in an unfit state to travel with safety, either from ordinary bodily disease, or during the acute stage of the form of mental aberration under which he is labouring.
3. Every lunatic who is unable to take care of himself, or to attend to his personal wants, shall be provided with the attendance, clothing, and food necessary for his safety and protection, and the strictest injunctions shall be given to the persons in charge of such lunatics to see that they do not suffer injury from exposure to weather, want of food, neglect of personal cleanliness, or any other cause whatever.

CH. XXXI. ss. 426, 427.

4. Every lunatic in transit to an Asylum shall be provided with at least two complete suits of clothing, and with an extra blanket, so as to admit of their being changed and washed in case of necessity. The most stringent orders shall be given to the persons in charge of a lunatic that all fouled clothes shall immediately be changed and cleansed before they are again worn.

5. Proper provision for cooking and supplying the food of lunatics in transit shall be made by the officer transmitting them.

6. Every lunatic, prior to transfer to an Asylum, shall be carefully examined by the Medical Officer who furnishes the certificate of unsoundness of mind, and the Medical Officer referred to shall certify that all the above-mentioned provisions for the safe custody of the lunatic have been made, and that he is in a fit state to travel. This certificate shall be transmitted by post to the officer in charge of the Asylum to which the lunatic is sent, and a duplicate copy of it shall be given to the person sent in charge of the lunatic.

7. The Officer in charge of the Asylum shall, on the arrival of a lunatic, see that the above orders have been strictly observed, and that the lunatic has been properly cared for in transit. Should there be any evidence of carelessness or other breach of these rules, the matter shall at once be reported in writing to the Magistrate of the District for the information and orders of the Government.

See also Appendix, "Escort Rules" towards the end.

This report should be made by the Court before whom the lunatic may be *direct* to Government (Agra S. N. A., IX of 1863), unless the case be under inquiry before a Magistrate other than the Magistrate of the District, or a Magistrate in *independent* charge of a Division of a District, when the reference should be forwarded through the Magistrate of the District (26 of 1863).

In Oudh, all reports should be made through the Judicial Commissioner (Cir. Order IV of 1867.)

Lunacy cases postponed under ss. 423, 426 shall be considered as pending before the Magistrate or Court of Sessions, and included in the Register of pending cases kept by such Magistrate or Court.

When finally disposed of, they are to be excluded from the return of average duration of cases, a foot-note being added to show the number of such cases decided within the year, with the average periods during which each case had been pending. (Cir. Order XII of 1864.)

So also Cal. H. Ct., Rughooa, W. R., VII, 3. So also W. R., III, C. L., 5, 22; Jud. Comr. Panj. R., 30, 1862-1864.

Magistrates and Medical Officers (N.-W. P. G. O. 12A of 1864,) invariably to enter in the Rolls sufficient specifications of the causes which have led to insanity, and to forward in each case the Schedules A and B with Statement, as required by Act XXXVI of 1858.

Officers forwarding insane persons are also instructed to take particular care, that such men, while on their journey to the Asylums, be supplied with proper food and clothing, as many of them, it is said, reach diseased and emaciated, and almost in a state of nudity.

The Superintendents of the Asylums to report to Government every case of continued failure to comply with these directions.

* S. 4.

Resumption of inquiry or trial.

427. Whenever an inquiry* or trial* is postponed under section four hundred and twenty-three or section four hundred and twenty-five, the Magistrate or Court of

Session, as the case may be, may at any time resume the inquiry* or trial,* and require the accused person, if detained in custody, to be brought before such Magistrate or Court; or, if the accused person has been released on security, may require his appearance.

* S. 4.

The surety of such person shall be bound, at any time, to produce him to any officer whom the Magistrate or Court of Session appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector-General of Prisons or the Visitors of Lunatic Asylums, granted under section four hundred and thirty-two.

Procedure on accused appearing before Magistrate or Court of Session.

428. If, when the accused person appears or is again brought before the Magistrate or the Court of Session, as the case may be, it appears to such Magistrate or Court that the accused person is in a fit state of mind to make his defence, the inquiry† shall proceed, or the accused person shall be put on his trial,† as the case may require.

† S. 4.

If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Magistrate or Court of Session shall again act according to the provisions of section four hundred and twenty-three or section four hundred and twenty-five.

The procedure laid down by this section must be followed as often as, on resuming the investigation, the accused still appears of unsound mind. The mere certificate of the Civil Surgeon is hardly sufficient evidence of the prisoner being incapable of making his defence. It would be more satisfactory if the Civil Surgeon were personally examined as to any discrepancies in his reports on the alleged insane. (Ruttun Doss, W. R., IX, 23.)

Finding in case of acquittal on ground of being lunatic.

429. Whenever any person is acquitted upon the ground that, at the time at which he is charged with having committed an offence, he was, by reason of unsoundness of mind, incapable of know-

ing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding (*a*) shall state specially whether such person committed the act or not (*b*).

This finding must be recorded on a formal charge drawn up by the committing or trying officer. (Ram Rutton Das, W. R., IX, 21.)

Where the plea of being insane at the time of committing the offence is put in, the prisoner should be put under the care of the Civil Surgeon, who should notify to the Judge, after he has had the prisoner no less than thirty days under his charge, whether he has reason to believe that the prisoner is or ever has been subject to periodical fits of madness: his evidence should then be taken on oath. (Sheikh Mustafa, I, W. R., C. R., I, 15; Hira Punja, I, Bom. H. C., 33.)

(*a*). The finding should be recorded after the following mode:—

The Court, concurring with the assessors, finds that Gazee Peer did kill Baboo Mundul by striking him on the head with a club; but that by reason of unsoundness of mind he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not, therefore, guilty of the offence specified in the charge, *viz.*, that he has committed culpable homicide not amounting to murder by causing the death of Baboo Mundul, and has thereby committed an offence punishable under s. 304 of the Indian Penal Code; and the Court directs that the said Gazee Peer be acquitted, and that, under the provision of s. 394 of the Code of Criminal Procedure, the said Gazee Peer be kept in safe custody in the ————, pending the orders of the Local Government. (W. R., VIII, C. L., 19.)

(*b*). See n. on s. 425.

This and the following section refer *only to persons capable of making their defence.*

S. 84, Penal Code. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.

But by s. 424, a Magistrate is not justified in discharging an accused charged with having committed an offence triable only by the Court of Session; he should commit him all the same as soon as the accused is sufficiently recovered from his lunacy to enable the preliminary inquiry to be proceeded with.

Person so acquitted to be kept in safe custody.

430. Whenever such finding states that the accused person committed the act charged, the Magistrate or Court of Session before whom the trial was held shall, if the act charged would, but for the incapacity found, have amounted to an offence, order such person to be kept in safe custody, in such place and manner as to the Magistrate or Court of Session seems fit, and shall report the case for the order of the Local Government.

The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

Whenever applications are submitted by the Sessions Judges to Government for the disposal of persons proved to have committed penal acts while insane, a copy and translation of the evidence which has been held to prove their insanity, shall accompany the application. (Agra S. N. A. Cir. Order II of 1854.)

See also notes to Ss. 426, 429.

The Chief Commissioner, Oudh, directs that when a Deputy Commissioner finds it necessary to confine a criminal under Ss. 426, 430, he should direct him to be kept in the jail pending the receipt of the orders of the Chief Commissioner, and he and the Civil Surgeon of the District should immediately fill up Form No. I or II, as the case may require, all but the last column, and transmit through the Judicial Commissioner for the orders of the Chief Commissioner which will be recorded in the last column, and attested by the Secretary, or Junior Secretary, and returned to the Deputy Commissioner, who will then forward the lunatic, with the form to the Asylum. In Lucknow, lunatics will not be kept in the jail, but will be sent direct to the Lunatic Asylum, pending the orders of the Chief Commissioner. The same procedure should be observed by officers in charge of jails in respect to Form No. III. Form No. IV will be filled up entirely by the Magistrate and Civil Surgeon. The Chief Commissioner impresses upon Civil Surgeons the necessity of their being more full and particular in their medical certificates than they sometimes are at present.

Magistrates instructed when forwarding an insane, whether criminal or not, to a Lunatic Asylum, to send with him an order of admission and statement of case in the accompanying form, besides the certificate of the medical officer prescribed in the Schedule A. appended to Act XXXVI of 1858.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT.

The undersigned, , Magistrate of , finds that is a lunatic (or an idiot, or a person of unsound mind), and a proper person to be detained under care and treatment, and directs that he be received into the Lunatic Asylum at

Subjoined is a statement respecting the said

Magistrate.

Dated this day of one thousand eight hundred and

STATEMENT.

(These questions are to be answered, as far as can be ascertained, in the case of every insane sent to Asylum.)

1. Name of patient.
2. Sex and age.
3. Hindoo or Mahomedan.
4. Caste.
5. Place, zillah, or province where born.
6. Whether first attack; if not, how long subject to attacks of insanity.
7. Duration of existing attack.
8. Supposed cause.

A. Whether fever or other serious illness preceded the attack.

B. Whether attributable to over-indulgence in ardent spirits or in bhang, ganja, or similar drugs.

C. Or to lawsuits, loss of property, family quarrels, death of relations, or similar events.

9. In cases where the patient is a wanderer and unknown, the circumstances which led to his arrest, and his subsequent conduct, to be stated.

10. Whether subject to epilepsy.

11. Whether suicidal.

12. Whether dangerous to others.

13. Whether any member of patient's family has been or is affected with insanity.

14. What treatment (if any) has been applied. (N.-W. P. Cir. 5A of 1868.)

Lunatic prisoners to be visited by Inspector-General.

431. When any person is confined under the provisions of section four hundred and twenty-six or section four hundred and thirty, the Inspector-General of Prisons, if such person is confined in a jail, or the Visitors of the Lunatic Asylums or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such Visitors as aforesaid; and such Inspector-General or Visitors shall make a special report to the Local Government* as to the state of mind of such person.

* S. 426, n. (a).

Procedure where lunatic prisoner is reported capable of making his defence.

432. If such person is confined under section four hundred and twenty-six, and such Inspector-General or Visitors as aforesaid shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court of Session, as the case may be, at such time as such Magistrate or Court of Session appoints, and such Magistrate or Court shall deal with such person under the provisions of section four hundred and twenty-eight; and the certificate of such Inspector-General or Visitors as aforesaid shall be receivable as evidence.

Where a Magistrate remanded a prisoner because of his being unable to make his defence on account of unsoundness of mind, his successor is bound to take up the case under this Section on the convalescence of the accused. (Rughora, VI, W. R., C. R., 3.)

Procedure where lunatic confined under Section 430 is declared capable of being discharged.

433. If such person is confined under the provisions of section four hundred and thirty, and such Inspector-General or Visitors as aforesaid certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon either order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum, if he has not been already sent to such an Asylum; and may appoint a commission, consisting of a Judicial officer not below the grade of a Sessions Judge, and two medical officers, whereof the chief medical officer attached to the Lunatic Asylum shall be one.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge or detention as to it may seem fit.

The Bengal Jail Rules lay down (245, 246) that such cases should be submitted to Government through the Inspector-General of Jails, accompanied with all the documents necessary for establishing the fact of insanity, and for a transfer of the prisoner to a Lunatic Asylum.

Delivery of lunatic to care of relative.

434. Whenever any relative or friend of any person detained under the provisions of section four hundred and thirty is desirous that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may make an order that such person may be delivered to such relative or friend.

CHS. XXXI., XXXII. SS. 434, 435.

Whenever such person is so delivered over, it shall be upon condition that he shall be subject to the inspection of such officer as the Local Government appoints, and at such times as such Government directs.

The provisions of sections four hundred and thirty-one and four hundred and thirty-three shall apply to persons detained under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate of the Inspector-General of Prisons, or the Visitors of Lunatic Asylums, under the said sections.

CHAPTER XXXII.—ss. 435—438.

CONTEMPTS OF COURT.

Procedure in certain cases of contempt.

435. When any such offence as is described in sections one hundred and seventy-five, one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty, or two hundred and twenty-eight of the Indian Penal Code is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he be a European British subject* or not, to be detained in custody; and, at any time before the rising of the Court on the same day, may take cognizance of the offence, and adjudge the offender to punishment by fine not exceeding two hundred rupees, and in default of payment, by imprisonment in the Civil jail for a period not exceeding one month, unless such fine be sooner paid.

* S. 71.

In every such case the Court shall record the facts constituting the offence, with any statement the offender may make, as well as the finding and sentence.

If the offence is under section two hundred and twenty-eight of the Indian Penal Code, the record

must show the nature and stage of the judicial proceeding in which such public servant was sitting, and the nature of the interruption or insult offered.

Section 228 Penal Code refers to intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

When a person is in custody for contempt any application for release should be made to the Committing officer. It is advisable, but not necessary, to limit the period of commitment to a fixed time. (Sittaram Atmarm, 1 Ind. Jur., N. S., 23.)

All Courts should either at once vindicate their dignity and authority by an exercise of the powers given them under this section or make an immediate charge before the Magistrate, which it would then become they duty of such Magistrate to at once investigate and deal with.

While in the Civil Jail under this section the offender is to be supplied with rations at the Government expense like all other Civil offenders.

Section 175, Penal Code, refers to the intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.

Section 178, refusing oath when duly required to take an oath by a public servant.

Section 179, being legally bound to state the truth and refusing to answer questions.

Section 180 relates to the refusal of a person to sign a statement made by him on lawful demand of a public servant.

A Section almost verbally identical with this will be found in Section 21, Act XXIII, 1861.

A contempt is by law made promptly punishable by the Court before which it is committed; but where a Magistrate, to whom the case has been referred, refuses to act, and the Court referring the case takes no further notice, another and a superior Court cannot revive the matter. (W. R., 11, C. L.)

Where the summary procedure sanctioned by this section is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In such a case, imprisonment cannot be added to fine as a punishment. In a case in which it was dealt with otherwise the offence must, under Section 436, be tried by an officer other than the person before whom the contempt was committed.—Chunder Sekur Roy, W. R., XII., 18.

Neither this Section nor Section 228, provides any punishment for prevarication by a witness or a refusal to return direct answers to a question. (Pandabin Vittioji, Bomb. IV, 7.)

The Civil Judge, though himself a Justice of the Peace, should forward a European British subject whom he considers deserving of a heavier punishment than he can summarily inflict by this Section, to another Justice of the Peace. (S. D. A. Agra, 793 of 1862, Full Bench; Jud. Com., Pun. R., 110, 1862—64.)

Should imprisonment be considered necessary, the Court must forward the accused to a competent Magistrate for trial, and must record the facts constituting the contempt and any statement the accused person may make, but no formal charge will be prepared. (Jud. Com., Cen. Prov., Book Cir. IV, 1863; X, W. R., C. R., 50.)

The warrant of commitment should be addressed to the Officer in charge of the jail, not to the Magistrate. (Cal. H. Ct., C. O., 27, 1865.)

The judgment-debtor, Thakoordass Nundee, had been cited as a witness before the Deputy Collector; he was on his way to the Court of that officer when he was arrested by two peadahs under a Civil Process. The peadahs made his arrest within the precincts of the Deputy Magistrate's Court, and with some show of violence and contempt of Court. The peadahs were informed by the judgment-debtor, as well as by the officers of the Deputy Collector's Court, that the judgment-debtor was entitled to protection from arrest under Civil Process. The protection is *eundo morando et redeundo*, and a reasonable indulgence must be given in construing what is to be held as going, staying, and returning. In this case the witness was clearly going to the Court of the Deputy Collector in obedience to a citation to give evidence, and he was protected from all arrests, which, in this instance, appears to have been made in the sight of the Deputy Magistrate, and in contempt of that officer's authority. (Cal. H. Ct. in case Shunker Roy.)

The object of the proviso removing the trial to another Court when a severe sentence seems called for is plain enough. The question whether a contempt has been so grave as to call for an extraordinary sentence is matter that demands graver and calmer consideration than it would be likely to get in the course of summary procedure.

Procedure where Court considers that accused should be imprisoned, or fined more than 200 rupees.

436. If the Court, in any case, considers that a person, accused of any such offence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, such Court, after recording the facts constituting the offence, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject,* to a Magistrate of the first class who is a Justice of the Peace and a European British subject; and shall cause bail† to be taken for the appearance of such accused person before such Magistrate, or if sufficient bail be not tendered, shall cause such person to be forwarded under custody to such Magistrate.

* S. 71.

† S. 388.

If the case be forwarded to a Magistrate, he shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate; and such Magistrate may adjudge the offender to punishment, as provided in the section of the Indian Penal Code under which he is charged.

If, in the case of a European British subject, the Magistrate to whom he is forwarded considers the offence to require a more severe punishment than he is competent to award under Chapter VII of this Act, he may commit the offender to the Sessions Court.

In no case tried under this section shall any Magistrate adjudge imprisonment, or a fine exceeding two hundred rupees, for any contempt committed in his own presence against his own Court.

Discharge of offender on submission or apology.

437. When any Court has adjudged an offender to punishment, or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may discharge the offender, or remit the punishment, on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Procedure when offender is a European British subject.

438. When any such offence as is described in Chapter X of the Indian Penal Code (except sections one hundred and seventy-five, one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty, and two hundred and twenty-eight) is committed in contempt of the lawful authority of any Civil, Criminal, or Revenue Court by a European British subject,* such offence shall be cognizable only by a Magistrate of the first class who is a Justice of the Peace and a European British subject; and such Magistrate may deal with the offender on conviction in the same manner as is provided in that behalf in section seventy-four.

* S. 71.

If such Magistrate considers the offence to require a more severe punishment than he is competent to award under the said section, he may commit† the offender to the Sessions Court (*a*).

† S. 198.

(*a*). 74. Any competent Magistrate may inquire into complaints of any offence made against a European British subject.

CHS. XXXII., XXXIII. ss. 438, 439.

If the offence complained of is a Magistrate's case, and can be adequately punished by him, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence, and on conviction may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

Notes by Select Committee on Chapter XXXIII.

We have redrawn the Chapter on Charges, with a view to increased simplicity; and we have introduced provisions as to joinder of several charges in a single trial, and of several persons in a single charge.

PART X.

CHARGE, JUDGMENT, AND SENTENCE.

CHAPTER XXXIII.—ss. 439—460.

Of the Charge.

Form of Charges.

* S. 141, n. (b).

Charge to state offence.

439. The charge shall state the offence* with which the accused person is charged.

Specific name of offence, sufficient statement.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the prisoner notice of the matter with which he is charged.

The Act and section or sections of the Act against which the offence is said to have been committed must be referred to in the charge.

What implied in charges.

The fact that the charge is made shall be equivalent to a statement that every legal condition, necessary by law to constitute the offence charged, was fulfilled in the particular case.

Language of charge.

The charge may be written either in English or in the language of the district. If not written in a language understood by the prisoner, it must be read to him in a language which he understands.

Previous conviction to be set out in charge.

If the accused personhas been previously convicted of any offence, and if it is intended to prove such* previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

* S. 460.

Illustrations.

(*a.*) A is charged with the murder of B.

This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the Penal Code, and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(*b.*) A is charged under section 326 of the Indian Penal Code with voluntarily causing grievous hurt to B, by means of an instrument for shooting: this is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c.*) A is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code, but the sections under which the offence is punishable must, in each instance, be referred to on the charge.

(*d.*) A is charged under section 184 of the Indian Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

The charge should be signed with the usual signature and sealed with the seal of the Court.

Technical objections to criminal charges, particularly on the ground of the want of a proper specification of details, should be taken before

the conclusion of a trial, when, if necessary, the Judge may amend the charge. If not so taken, the objection ought not to be allowed, unless it should appear that some failure of justice has been caused by the irregularity complained of. (Ramasawing, W. R., V, 1.)

When different trials are held at different times and against different prisoners in respect of the same crime, a new charge should be delivered in each case. (Mahadeo, W. R., 15, 1864.)

It is useless to reproduce the almost numberless criminal letters and rulings on charges; the terms of the new Code are so clear that if a man do but study them honestly, the drawing up of a charge will no longer present any difficulties. The models given in Sched. III should be carefully consulted, and the charge framed in accordance with them.

Particulars as to time, place, and person.

440. The charge shall contain such particulars as to the time and place of the alleged offence and the person against whom it was committed, as are reasonably sufficient to give notice to the accused person of the matter with which he is charged.

When manner of committing offence must be stated.

441. When the nature of the case is such that the particulars mentioned in sections four hundred and thirty-nine and four hundred and forty do not give sufficient notice to the accused person of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a.*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c.*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d.*) A is accused of obstructing B, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e.*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f.*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Forms in schedule.

442. The charge may be in the form given in the third schedule to this Act or to the like effect.

Effect of errors.

443. No error, either in the way in which the offence is stated, or in the particulars required to be stated in section four hundred and forty-one, and no omission to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

Illustrations.

(*a.*) A is charged under section 242 of the Indian Penal Code with "having been in possession of counterfeit coin having known at the time when he became possessed thereof that such coin was counterfeit." The word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was in this case a material error.

(*d.*) A is charged with the murder of Khoda Baksh on the 21st January. In fact the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e.*) A was charged with murdering Haidar Baksh on the 20th January and Khoda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

Prisoner may apply for amendment.

444. Any accused person may apply to the Court by which he is tried for an amendment of the charge made against him; and in considering whether any

error in a charge did in fact mislead the accused person, the Court shall take into account the fact that he did or did not make such an application.

Court may amend a charge.

445. Any Court may, either upon the application of the accused person, or upon its own motion, amend or alter any charge at any stage of the proceedings before judgment is signed, or in cases of trials before a Court of Session, before the verdict of the jury is delivered or the opinion of the assessors is expressed. Such amendment shall be read and explained to the accused person.

It ought usually to be amended before the accused person is put on his defence. (Agra, S. N. A., C. O. XVI., 1864.)

The reason for the alteration, and the fact that it was explained to the accused, and he given the option to answer it and produce fresh evidence, should appear clearly on the record.

Amendments in a charge ought to be made formally, and should appear on the face of the record. (Feojdar Roy, W. R., IX, 14.)

How Court of Session may deal with charge.

446. If a prisoner is committed to the Court of Session, either without any charge at all, or upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court of Session may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate. A copy (*a*) of such charge shall be given to the accused person.

(*a*). The copy must, of course, be given free of all expense and without unnecessary delay.

When trial may proceed immediately after amendment.

447. If the amendment or alteration is such that proceeding immediately with the trial* is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial* as if the amended charge had been the original charge.

* S. 4.

The provisions of this Section should be liberally construed so as not to prejudice the accused. When the charge is amended, the amended charge should be formally read over to the prisoner; a mere statement of the offence charged is insufficient.—Hoolasee, S. N. A. Agra, 1863, 27.

When new trial may be directed or trial suspended.

448. If the amendment or alteration is such that proceeding immediately with the trial* is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial,* or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing* his defence, the Court may further adjourn the trial, to admit of the appearance of any witness, whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

* S. 4.

The rules given in ss. 363, &c., apply equally to this case.

Prosecutor and accused person may recall witnesses.

449. In all cases of amendment or alteration of a charge, the prosecutor and accused person shall be allowed to recall and examine any witness who may have been examined.

Previous sanction to be obtained if offence in new charge require it.

450. If the offence stated in the new charge be one for which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained; unless sanction has been already obtained for a prosecution on the same facts as those on which the new charge was based

See ss. 465, &c.,

Effect of material error.

451. If any Appellate Court, or the High Court, in the exercise of its powers of Revision, is of opinion that any person, convicted of an offence, was in fact misled in his defence by an error in the charge, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks proper.

If such Court is of opinion that the facts of the case are such that no valid charge could be preferred against the person accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence under section 188 of the Indian Penal Code upon a charge which omits to state that A knew that he was directed to abstain from a certain act by an order promulgated by a public servant lawfully empowered to promulgate such order. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

JOINDER OF CHARGES.

Separate charges for distinct offences.

452. There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried* separately, except in the cases hereinafter excepted.

*S. 4.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft, and the causing grievous hurt.

More offences than one of same kind may be charged within a year of each other.

453. When a person is accused of more offences than one of the same kind, committed within one year of each other, he may be charged and tried† at the same time for any number of them not exceeding three.

†S. 4.

EXPLANATION.—Offences are said to be of the same kind under this section if they fall within the provisions of section four hundred and fifty-five.

I.—Trial of more than one offence.

454. I.—If in one set of facts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

Illustrations.

(*a.*) A rescues B, a person in lawful custody, and causes grievous hurt to C, a constable in whose custody B was. A may be separately charged with, convicted of, and punished for offences under sections 225 and 333, Indian Penal Code.

(*b.*) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of, and punished for the possession of each seal for a distinct forgery, under section 473 Indian Penal Code.

(*c.*) A, with intent to cause injury to B, institutes proceedings against him knowing there is no just or lawful ground for such proceedings. A also falsely charges B with having committed an offence. A may be separately charged with, convicted of, and punished for two offences under section 211, Indian Penal Code.

(*d.*) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for offences under sections 211 and 194, or 195, Indian Penal Code.

(*e.*) A, knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her as a slave. A may be separately charged with, convicted of, and punished for offences under sections 368 (read with 367) and 370, Indian Penal Code.

(*f.*) A, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant engaged in suppressing the riot. A may be separately charged with, convicted of, and punished for offences under sections 147, 325, and 152, Indian Penal Code.

(*g.*) A criminally intimidates B, C, and D at the same time. A may be separately charged with, convicted of, and punished for each of the three offences under section 506, Indian Penal Code.

(*h.*) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for three offences under section 302, Indian Penal Code.

II. One offence falling within two definitions.

II.—If a single act falls within two separate definitions of any law, in force for the time being, by which offences are defined or punished, the person who does it may be charged with each of the offences so committed, but he must not receive a more severe punishment than could be awarded, by the Court which tries him, for either.

Illustrations.

(*i.*) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with and convicted of offences under sections 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 379 only.

(*j.*) A wrongfully strikes B with a cane. A may be separately charged with and convicted of offences under sections 352 and 323 of the Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 323 only.

(*k.*) A wrongfully kills a buffalo worth sixty rupees, belonging to B, and then takes away the carcass in a manner amounting to theft. A may be separately charged with and convicted of offences under sections 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 429 only.

(*l.*) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with and convicted of offences under sections 411 and 414, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.

(*m.*) A uses a forged document in evidence in order to convict B, a public servant, of an offence under section 167. A may be separately charged with and convicted of offences under sections 471 (read with 466) and 196 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those sections only.

III. Acts severally constituting more than one offence, but collectively coming within one definition.

III.—If several facts of which one or more than one would by itself constitute an offence form, when combined, an offence under the provisions of any law, in force for the time being, by which offences are defined or punished, a person who does them may be charged with every offence which he may have committed, but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded, by the Court trying him, for any one of such offences, or for the offence formed by their combination.

Illustrations.

(*n.*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with and convicted of offences under sections 454 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

(*o.*) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with and convicted of offences under sections 323, 392, and 394 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 392 or 394 only.

(*p.*) A entices B, the wife of C, away, and then commits adultery with her. A may be separately charged with and convicted of offences under ss. 498 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under s. 497 only.

When several items of property stolen from different places are found in the house of an accused person, it is better to regard them as evidence of the offence described in s. 413, rather than as constituting separate offences under s. 411 of the Indian Penal Code. (Oudh Book Cir. VI of 1870.)

Where it is doubtful what offence has been committed.

455. If a single act or set of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed any such offence; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust, or cheating. He may be charged separately with theft, criminal breach of trust and cheating, or he may be charged with having committed either theft or criminal breach of trust or cheating.

See n., s. 441.

Where there is doubt at the time of framing the charge, two or more heads should always be given, as (1) murder, (2) culpable homicide not amounting to murder, (3) voluntarily causing grievous hurt, &c.

Where the committing officer omitted in the first instance to draw up charges under different heads for several offences chargeable under the same section, it was held that the Judge could go on with the trial of one charge, and direct the Magistrate to send in fresh charges in each of the other cases which he could do without taking fresh depositions. (Kalaram Singh, W. R., VII, 8.)

When a person charged with one offence, he can be convicted of another.

456. If, in the case mentioned in the last section, one charge only is brought against an accused person, and it appears in evidence that he committed a different offence, for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed criminal breach of trust or receiving stolen goods. He may be convicted of criminal breach of trust or receiving stolen goods, though he was not charged with it.

When offence proved included in offence charged.

457. When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

Illustrations.

(*a.*) A is charged under s. 407, Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under s. 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under s. 406.

(*b.*) A is charged with murder. He may be convicted of culpable homicide, or of causing death by negligence.

What persons may be charged jointly.

458. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together, or separately, as the Court thinks proper, and the provisions hereinbefore contained shall apply to all such charges.

Illustrations.

(*a.*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b.*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c.*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Withdrawal of remaining charges on conviction on one of several charges.

459. In trials before a Court of Session or High Court, when more charges than one are preferred against the same person, and when a conviction has been had on one

or more of them, the Government Pleader or other officer conducting the prosecution may, with the consent of the Court, withdraw, or the Court of its own accord may suspend the inquiry into the remaining charge or charges.

PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

460. A person who has once been tried* for an offence and convicted† or acquitted‡ of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried* again on the same facts for the same offence, nor for any other offence for which a different charge from the one made against him might have been made under section four hundred and fifty-five, or for which he might have been convicted under section four hundred and fifty-six.

* S. 4.
† Ss. 206, 211, 220, 263.
‡ Ss. 211, 220, 263.

A person, convicted† or acquitted‡ of any offence, may be afterwards tried* for any offence, for which a separate charge might have been made against him on the former trial* under section four hundred and fifty-four, paragraph I.

A person acquitted‡ or convicted† of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for which such person was acquitted or convicted, may be afterwards tried* for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted‡ or convicted.†

A person acquitted‡ or convicted† of any offence in respect of any facts may, notwithstanding such acquittal‡ or conviction,† be subsequently charged with and tried* for any other offence which he may have committed in respect of the same facts, if the Court by which he was first tried* was not competent§ to try* the offence with which he is subsequently charged.

§ Sched. IV.

CHS. XXXIII., XXXIV., ss. 460, 461.

Illustrations.

(*a.*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged upon the same facts either with theft as a servant, with theft simply, or with criminal breach of trust.

(*b.*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with and tried for robbery.

(*c.*) A is tried for an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide.

(*d.*) A is tried under s. 270 of the Indian Penal Code, for malignantly doing an act likely to spread the infection of a disease dangerous to life, and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. A may be charged under s. 325 with voluntarily causing grievous hurt to that person.

A having been tried and discharged for the offence of assault under s. 352, P. C., cannot again, upon the same complaint, be tried for causing hurt. (Kaptan, B. L. R., VII, App., 25.)

The elaborate and learned finding of the Calcutta High Court Judges, in the case of Dwarkanath Dutt, W. R., VII, 15, has been corroborated by this section. It is needless therefore to reproduce it here.

Notes by Select Committee on Chap. XXXIV.

We have stated the matters which the finding must necessarily contain, but have left the Courts to adopt the form in which those matters shall be expressed.

CHAPTER XXXIV.—ss. 461—464.

Of the Judgment, Order, and Sentence.

* S. 4.

Judgment to specify offence.

† Ss. 206, 211, 220, 263.

461. When the trial* in any Criminal Court is concluded, the Court, in passing judgment, if the accused person be convicted,† shall distinctly specify the offence of which, and the section of the Indian Penal Code or other law under which, he is convicted;

Judgment in the alternative.

or, if it be doubtful under which of two sections, or under which of two parts of the same section such offence falls, the Court shall distinctly express the same, and pass judgment in the alternative, according to section seventy-two of the said Code.

By Act XXXIII, 1854, every decision, sentence, or final order made or passed by any officer acting judicially, together with the reasons for making or passing the same, must be written in the vernacular of such officer, and be dated or signed by such officer in Court at the time of his making or passing the same (pp. 21, 33, 42, 53, C. O., S. N. A. Agra). The judgment in cases of culpable homicide not amounting to murder should invariably mention within which of the exceptions noted under s. 300, Indian Penal Code, the culpable homicide was held to come so as not to amount to murder (s. 380). (S. N. A. Agra Cir. Ord. 39, 1862; Cal. H. Ct. Cir. Ord. 5, 1863; II, W. R., C. L., 8, 11; Jud. Com., Cen. Prov., B. C., IX, 1863.)

The judgment of a Sessions Judge should be in English, and be accompanied by a translation (Bhobunnesshur Gossamy, IV, W. R., 19), and should contain such an outline of the case as may enable the superior Court to see that there is sufficient evidence to justify the order passed. (II, W. R., C. L., 20.)

The following rules have been circulated by the Calcutta High Court and Oudh (Cir. 16 and 20, 1864) for the guidance of all officers subordinate to them:—

1*st*.—When *all* the facts in evidence form portion of *one* entire offence, a verdict should be entered up, and sentence passed, for that offence only; and though a portion of the *same facts* would, if they stood alone, constitute a second offence, a verdict of "not guilty" should be entered up on any separate charge for the minor offence.

2*nd*.—For instance, when the chief offence charged and proved by the evidence is theft, the fact of the stolen property being found int he possession of the offender should be considered as a portion of the evidence by which the chief offence is proved; and a verdict of "not guilty" should be entered upon the charge of dishonestly receiving or retaining such property.

3*rd*.—If a portion of the facts in evidence constitute *one* offence, and another and *distinct* portion constitute a *second separate and distinct offence*, under the Penal Code, a verdict on each charge should be entered up, and a substantial sentence passed on the principal offence, and a light one or none on the second offence charged; or a substantial sentence, if necessary, on each offence; the second sentence to commence on the expiry of the first. The Code of Criminal Procedure does not recognise concurrent or cumulative sentences.

4*th*.—Such, for instance, would be the course to be pursued when there is a conviction for rape and assault, and subsequent imprisonment, or for forgery of a Bill of Exchange, and for subsequent perjury in swearing in a Court of Justice that it is a genuine document.

S. 72, Penal Code, declares that, in "all cases in which judgment is given that a person is guilty of one of several offences, but it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all."

"This mode of procedure or punishment should only be resorted to in cases in which it is impossible to ascertain the specific offence committed by a person who clearly has participated in, or is guilty of, some offence. The main facts which constitute the body of such offence are proved, and the doubt relates to some incidental point which is of a quality important only as determining whether the offence falls technically under one designation or another. Without determining this point, the Court convicts the offender in the alternative, and sentences him to a punishment equally warrantable whether the offence were

(*ex gr.*) theft or breach of trust." (Morgan and Macpherson's Penal Codes.)

When reference is made in a judgment to witnesses, or accused persons, officers should not content themselves with merely mentioning their number on the list, but should also mention their names. The name of the person referred to should always be distinctly stated.

When a Government official is convicted of an offence, a copy of the decision should be sent to the Head of the Department in which he is employed.

So, whenever in any case an officer (including non-commissioned and subordinate officers of the Medical and Commissariat Departments) is sentenced by a Criminal Court to a fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine less than Rs. 200, the Court passing sentence should send a copy of its finding of its own accord and motion to the immediate superior of the person convicted. This is somewhat modified by H. Ct., N. W. P. C. II of 1871:—

In all cases of convictions of persons serving under the Government of India, in the Military Department, a copy of the decision should be forwarded to the Secretary to Government, N. W. P., for transmission to the Government of India, in the Military Department.

When judgment is to be pronounced.

Ss. 57, 186, Pref. to Chap. V.

462. In trials with Assessors, when the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders,* the Court shall pronounce its judgment. The judgment shall be pronounced in open Court either immediately or on some future day of which due notice shall be given to the parties or their pleaders.

Every sentence must be passed in open Court at the time of trial, and then and there explained to the prisoner. This is more especially necessary when a sentence of death is recorded.

If for any cause a Judge cannot complete his proceedings and record his sentence while holding any particular Sessions, the case must be adjourned till some succeeding Sessions.

The Court may not reserve judgment till after the Sessions is closed, and send notice of its finding to the Magistrate of the district. (C. P. Bk. C. II of 1866.)

Judgment to be written in English or language of district.

463. The judgment or final order shall be written by the presiding officer of the Court in English or the language of the district.

Proviso.

If the language of the Judge be not English, the judgment shall not be written in English, unless the Judge be sufficiently conversant with the English language

to be able to write a clear and intelligible decision in that language.

Judgment what to contain.

464. The judgment or final order shall contain the point or points for determination, the finding thereupon, and the reasons for the finding, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. When a judgment or final order has been so signed, it cannot be altered (*a*) or reviewed by the Court which gives such judgment or order. It shall specify the offence of which the accused person is convicted, and the punishment (*b*) to which he is sentenced; or, if it be a finding of acquittal, it shall direct that he be set at liberty.

(*a*). No Court but a High Court can alter a sentence once given, save in the case of mere clerical errors. In the case of contempts on the submission or apology of an offender, a sentence may be remitted. (V., s. 437.)

(*b*). A sentence of "labor commutable by a fine" is illegal. (Sheo Lall, Agra, 1862, 155.)

Where dismissal from office may be considered necessary, a separate proceeding should be drawn up, as it is not a punishment authorised by law, and should not, therefore, have a place in the sentence. (Jud. Com., Punjab R., 6, 1862; Cen. Prov., 13, 1863; Chunder Coomar Sen, W. R., V, C. R., 4.)

A Sessions Judge has no power to declare that a sentence shall run from a period prior to the conviction. (Bul Sing, N. W. P., 19th January 1872.)

The judgment or order shall be explained to the accused person, or person affected by it; and a copy shall be given him in his own language as soon as possible (*c*).

(*c*). Care to be taken to send this copy without delay, especially when the accused has been sent to jail.

N. B., I.—*The giving of copies of judgments and order no longer depends as before on its being applied for or not, but is compulsory.*

N. B., II.—*A judgment is something more than a mere sentence, and must be written in full before being pronounced. The accused is to have not merely his fate, but also the reasons that have actuated the Magistrate explained to him.*

Judgment to be translated.

The original (*d*) shall be filed with the record of proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary

use in the district, shall be incorporated in the record of the case.

(*d*). Until any other form be prescribed, it would be as well to follow, as far as possible, the old form, which ran thus:—

In trials by Jury—

When the Jury are unanimous—

The Jury are unanimous in finding that Z is guilty of the offence specified in the charge,—namely, that Z has waged war against the Queen, and has thereby committed an offence punishable under s. 121 of the Indian Penal Code; and the Court directs that the said Z be [*sentence*].

2*nd*.—The Jury are unanimous in finding that Z is not guilty of the offence specified in the charge,—namely, that Z has waged war against the Queen, and has thereby committed an offence punishable under s. 121 of the Indian Penal Code; and the Court directs that the said Z be discharged.

When the Jury are not unanimous, but a majority concur in finding the accused guilty, and the Court does not think it necessary to dissent—

3*rd*.—A majority find that Z is guilty of the offence specified in the charge,—namely, that Z has, with the intention of inducing the Honorable A B, a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and has thereby, &c., *as before in form* (1); or,

4*th*.—A majority of the Jury (stating the number, as above) find that Z is not guilty of the offence specified in the charge,—namely, that Z has, &c., *as before in form* (2); or,

5*th*.—The Jury, or a majority of the Jury, find that Z is guilty either of the offence specified in the first head of the charge, or of the offence specified in the second head of the charge,—namely, that Z has either committed theft, and has thereby committed an offence punishable under s. 379 of the Indian Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under s. 406 of the said Code. The Court directs that, under the provisions of the above-mentioned sections, and the provisions of s. 72 of the Indian Penal Code, the said Z be [*sentence*].

9*th*.—The Court, concurring with the Assessors (or one or more of the Assessors), finds that Z is guilty of the offence, &c., *as in form* (1).

10*th*.—The Court, differing from the Assessors, finds that Z is not guilty of the offence specified in the charge, &c., *as in form* (2).

In trials upon a formal charge without Jury or the aid of Assessors—

12*th*.—The Court finds that Z is guilty of the offence specified in the charge, namely, that Z has committed theft, &c., *as in form* (1).

13*th*.—The Court finds that Z is not guilty of the offence specified in the charge, namely, that Z has committed theft, &c., *as in form* (2).

In trials in which no formal charge has been prepared—

14*th*.—The Court finds that Z has used criminal force, and has thereby committed an offence punishable under s. 353 of the Indian Penal Code, and directs that the said Z be [*sentence*].

15*th*.—The Court finds that the complaint of assault is not proved, acquits Z, and directs that he be discharged.

In all cases in which fine forms a whole or part of the punishment, a term of imprisonment should be awarded in default of payment of the fine. Agra, C. O. 17, 1862 (s. 45).

See n., ss. 15, 211, 220, 227, 228, 262, and 263.

A translation of all final orders and sentences must be incorporated with the record, notwithstanding that, under orders of the Local Government under s. 335, the evidence may have been recorded in English. (W. R., I, 5, C. L.)

The prisoner was declared entitled to a finding by the Sessions Judge as to the sufficiency or otherwise of the evidence adduced by him to prove his *alibi*, and that he did not abscond to evade justice. (Madho Surrun Singh, W. R., VIII, 18.)

Remarks to the effect that the prisoner was a person of wealth and influence, and had prevented truth from appearing, ought not, unless established in evidence, to find a place in a judgment. (Dhurum Dutt Ojha and two others, W. R., VIII, 13.)

A Magistrate is not bound in his judgment to give his opinion as to the character of the evidence in prolix detail, much less the Judge in confirming the sentence passed by the Magistrate. (Hurihur Churn Singh, W. R., 1865, Cr., 6.)

In trials by Jury the Court need not state its reasons for its judgment, but shall record the heads of the charge to the Jury.

If the Judge differ from the Jury and determine to submit the case to the High Court, he shall record the grounds of his opinion.

Nothing herein contained shall prevent any Court from recalling any order other than a final order.

No error or defect in any judgment shall invalidate the proceedings.

Notes by Select Committee on Chapter XXXV.

With a view to avoiding miscarriages of justice, we have provided that a sanction for a prosecution under any specified section shall cover a prosecution for the same facts under any other section.

We have provided that any person having the care of a married woman may institute a prosecution for adultery committed with her. This provision is designed to meet the case of native soldiers while on service.

CHAPTER XXXV.—ss. 465—479.

Prosecutions in certain Cases.

Prosecutions for offences against the State.

465. A complaint of an offence punishable under Chapter VI of the Indian Penal Code, except section one hundred and twenty-seven, or punishable under section two hundred and ninety-four A of the said Code, shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor-General of India in Council, or the Local Govern-

CH. XXXV. ss. 465, 466.

ment or some officer empowered by the Governor-General in Council to order or authorize such prosecution, or unless instituted by the Advocate-General.

Chapter VI of the Indian Penal Code refers to offences against the State.

S. 127, Penal Code, relates to the receipt of property, knowing the same to have been taken in war against an Asiatic power in alliance or at peace with the Queen, or by depredation on the territories of such power.

S. 294 A refers to keeping a Lottery office.

* S. 141, n. (b).

466. A complaint of an offence* committed by a public servant in his capacity as such public servant, of which any Judge† or any public servant not removeable (*a*) from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve.

Prosecution of Judges and public servants.

† S. 4, n.

(*a*). Act XXXVII of 1850 refers to inquiries into the behaviour of such public servants.

This section relates to offences specified in Chapter IX of the Indian Penal Code, and to no other. Offences committed against the person or property of individuals by one who happens to be a public servant, are not necessarily committed by him *as such public servant* in the sense in which these words are used in the Penal Code; and, unless committed in that character, must be regarded as the acts of *individuals in their private capacity;* charges, therefore, founded on such acts do not need the sanction of Government, or other competent authority, before they can be entertained by a Criminal Court, but should be dealt with in the same way as charges against individuals ordinarily are. (Cal. H. Ct. Cir. XX, 1864.)

No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty unless with the sanction of Government.

Sanction when to be given.

The sanction must be given before the commencement of the proceedings.

Power of Local Government.

The Local Government may limit the person by whom, and the manner in which, the prosecution is to be conducted, and may specify the Court before which the trial* is to be held.

* S. 4.

Prosecution for contempts of the lawful authority of public servants.

467. A complaint of any offence described in Chapter X of the Indian Penal Code, not falling within section four hundred and thirty-five or four hundred and thirty-six of this Act, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

The prohibition contained in this section shall not apply to the offences described in sections one hundred and eighty-nine and one hundred and ninety of the Indian Penal Code.

Chapter X, Penal Code, refers to contempts of the lawful authority of public servants. See s. 473.

Ss. 435, 436 exempt ss. 175, 178, 179, 180, and 228.

The law looks on the conduct of a person committing an offence under Chapter X of the Penal Code, not personally in regard to the person actually injured, but to him as representative of the public, and therefore the head of the department is made responsible for the due exercise of the discretion as to whether the public good would be promoted by a criminal prosecution for such offences. This will not bar the civil remedy of an action for damages by the party actually injured. (Moulvie Abdool Luteef, W. R., IX, 31.)

When officers are of opinion that there is sufficient ground for investigating a charge mentioned in ss. 467, 468, and 469, they sometimes proceed to try it themselves. This process is illegal (s. 473), and all such proceedings must be quashed on the ground of want of jurisdiction in the trying officer, who ought, under s. 471, after making such preliminary inquiry as may be necessary, to send the case for investigation to another Magistrate. This refers only to offences which are not triable by a Court of Sessions exclusively. The object of the section seems plain enough. It is to prevent an officer before or against whom the offence has been committed, and who may perhaps have waxed warm in the preliminary proceedings, from trying and punishing the accused himself.

But under s. 474, in any case triable by the Court of Session exclusively, any Civil Court may complete the investigation and commit itself. And, under s. 477, if any such offence triable by the Court of Session exclusively be committed before a Magistrate not competent to commit for trial, he shall send the case to another Magistrate who is.

From this it would seem to follow that, if such an offence be committed before a Magistrate who is competent to commit, he may do so. But on no account can either a Magistrate or a Civil Judge himself deal with such an offence which is not cognizable by the Court of Session exclusively.

A Subordinate Civil Court has power to require the infliction of punishment for a contempt falling under Chapter X, s. 174; but when the Magistrate declines to act, and the Civil Court in which the contempt occurred takes no further notice, then another Civil Court in which the contempt did not occur should not, on the accidental discovery of this refusal more than nine months after, recommend the revival of the case. (Mahesh Chunder Roy, W. R., C. L., VI, 11.)

Prosecution for certain offences against public justice.

468. A complaint of an offence against public justice, described in section one hundred and ninety-three (*a*), one hundred and ninety-four, one hundred and ninety-five, one hundred and ninety-six, one hundred and ninety-nine, two hundred, two hundred and five, two hundred and six, two hundred and seven, two hundred and eight, two hundred and nine, two hundred and ten, two hundred and eleven, or two hundred and twenty-eight of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court, shall not be entertained in the Criminal Courts, except with the sanction of the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate (*b*).

(*a*). S. 193. Giving or fabricating false evidence in a judicial proceeding.

Giving or fabricating false evidence in any other case.

S. 194. Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.

If innocent person be thereby convicted and executed.

S. 195. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation, or imprisonment for more than seven years.

S. 196. Using in a judicial proceeding evidence known to be false or fabricated.

S. 199. False statement made in any declaration which is by law received as evidence.

S. 200. Using as true any such declaration known to be false.

S. 205. False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.

S. 206. Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.

S. 207. Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.

S. 208. Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.

S. 209. False claim in a Court of Justice.

S. 210. Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.

S. 211. False charge of offence made with intent to injure.

S. 228. Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

(*b*). See ss. 470, 473.

A Court of Session or Magistrate has no power to interfere with the order of a Magistrate permitting a prosecution under this section. (Gopal Mazumdar, B. L. R., VIII, App., 20.)

Great caution should be exercised in giving sanction: when a main story is believed, the deponent should not be prosecuted for want of accuracy in mere details. A Court should satisfy itself that there are good *primâ facie* grounds for giving sanction. (Nowazish Ahmed Ally Khan, Agra, II, 318; Poosa Ram, W. R., VI, 11.)

See s. 16, Act XXIII of 1861.

It is no reason for staying a charge of false evidence that the case in which it was alleged to have been given has been appealed. (W. R., III, C. L., 21.)

The power of Government and the Board of Revenue to place restrictions on the power of the Revenue Courts to prosecute for the offences described in this and the next section is limited to those cases in which the Revenue Officers act in their executive, not in their judicial, capacity, as in the latter case they are empowered to proceed under this section. (Bulbhuddur (Full Bench), S. N. A. Agra, 1863, 42A.)

A Collector proceeding under the Rent Law (Act X, 1859) is a Civil Court within the meaning of this section. (Bunsee Singh, W. R., I, 47.)

A Collector cannot sanction proceedings on account of an offence committed before a Deputy Collector sitting as Judge in rent suits in which the appeal lies to the Zillah Judge.

Semble.—He can, where the appeal lies to himself. (Moshurruf Ally, N. A., Agra, 1862, 373.)

Prosecution for certain offences relating to documents given in evidence.

469. A complaint of an offence relating to documents described in section four hundred and sixty-three (*a*), four hundred and seventy-one, four hundred and seventy-five, or four hundred and seventy-six of the Indian Penal Code, when the document has been given in evidence in any proceedings, in any Civil or Criminal Court, shall not be entertained against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate (*b*).

(*a*). S. 463 relates to forgery.

S. 471, to using as genuine a forged document which is known to be forged.

S. 475, to counterfeiting a device or mark used for authenticating documents described in s. 467 of the Indian Penal Code, or possessing counterfeit marked material.

S. 476 to counterfeiting a device or mark used for authenticating documents other than those described in s. 467 of the Indian Penal Code, or possessing counterfeit marked material.

(*b*). See ss. 470 and 473, and s. 468, n.

A Civil Court cannot proceed under these sections in a case of criminal breach of trust (409, Penal Code), and its handing over a person to the Magistrate's Court under that section must be held to have been without a complaint. (Hamidooddeen, H. C., W. P., I, N. S., 6.)

A former decision in a civil suit in which the issue was the genuineness or otherwise of a kuboolent, and the Court held that it was not genuine, but added (as an *obiter dictum*) that the pottah produced by the other side was authentic, does not bar the jurisdiction of a Civil Court in sanctioning a commitment for forgery in respect of the pottah. (Juggut Misser, W. R., V, 50.)

The provisions of this and the preceding section provided that persons against whom a civil suit had been successfully prosecuted, and who from vindictive motives should be desirous of bringing their adversaries into the Criminal Courts, and harassing them by charges of perjury and forgery, should not be allowed to do so unless the Court where the suit was tried saw cause to permit it. (Poosa Ram, W. R., VI, 12.)

There is nothing in the law which, in cases of forgery other than where forged deeds are produced in evidence in a Civil or Criminal Court, does or ought to prevent a Magistrate from making a preliminary inquiry, and afterwards committing to the Sessions persons accused of these offences, on such particular charges as he may deem capable of proof even if he omits the particular one on which the case was originally sent to him. (Ramdhary Singh, W. R., X, C. R., 5.)

Nature of sanction necessary.

470. The sanction referred to in sections four hundred and sixty-seven, four hundred and sixty-eight, and four hundred and sixty-nine, may be expressed in general terms, and need not name the accused person.

Such sanction may be given at any time, and a sanction under any one of the three last preceding sections shall be deemed sufficient authority for the Court to amend the charge to one of an offence coming within either of the two remaining sections, if the facts disclose such offence.

EXPLANATION.—In cases under this chapter, the report or applictaion of the public servant or Court shall be deemed sufficient complaint.

Where a Sessions Court directs a commitment, it must be taken to sanction the prosecution out of which the commitment arises. (Lekraj, N. W. P., 9th April 1870.)

The Calcutta High Court (Mohima Chunder Chuckerbutty, S. W. R, XV, 45) held that sanction given by a Sessions Judge after the case had been committed to him, and the prisoner had pleaded to the charge, was not a sanction under the section.

Procedure in cases mentioned in sections 467, 468 and 469.

471. When any Court, Civil or Criminal, is of opinion that there is sufficient ground for inquiring into any charge mentioned in sections four hundred and sixty-seven, four hundred and sixty-eight, and four hundred and sixty-nine, such Court, after making such preliminary inquiry* as may be necessary, may either commit† the case itself, or may send the case for inquiry* to any Magistrate having power to try‡ or commit§ for trial the accused person for the offence charged.

* S. 4.
† S. 196.
‡ Sched. IV.
§ S. 143.

Such Magistrate shall thereupon proceed according to law; and the Court may send the accused person in custody, or take sufficient bail for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial or inquiry.

The Magistrate receiving the case may, if he is authorized‖ to make transfers of cases, transfer the inquiry to some other competent Magistrate instead of completing the inquiry himself.

‖ S. 44.

When an offence has been committed in or before a Civil Court, and it appears to the presiding Judge that the charge falls under two or more heads, all of which are not triable by a Court of Session exclusively, the Civil Court should proceed under this section rather than s. 173,—that is to say, instead of completing the investigation itself, should send the case for inquiry as directed above. (Cal. H. Ct. Cir. Ord. 27, 1868 (Civil); Jud. Com., Oudh, Cir. Ord. 33, 1866.)

A Collector acting under Act X of 1859 is a Civil Judge. He has, therefore, full authority to act under s. 474 and the following sections (Bunseo Singh, W. R., I, 47); but a Collector cannot sanction the institution of Criminal prosecution out of proceedings before a Deputy Collector in a case under Act X of 1859, in which the appeal would not lie to him, but to the Judge, since the Deputy Collector in such a matter would be subordinate not to the Collector but to the Judge. (2 Agra, 373.)

A preliminary inquiry held by a Civil Court, under s. 471, is not judicial, and should not, therefore, be on oath, nor need it be in the presence of the accused. The Magistrate on receiving such a case should commence it *de novo*. (Jud. Comr., Punjab, 1610, 1st April 1862; see also Nujjum Ali, W. R., VI, 41.)

All that the Court making such an inquiry has to do, is to satisfy itself that there are *primâ facie* grounds for sending the case for investigation to a Magistrate. (Chotoo Shadoo Peada, W. R., IX, 3.)

A Civil Judge, holding a preliminary inquiry into an offence alleged to have been committed by the accused in a suit before him, is competent to proceed against any other person who may appear to be implicated in that offence, though such person did not appear in the suit. (Agra S. N. A., Moona Singh (Full Bench), 81, 1863.)

A Magistrate cannot return a case once transmitted to him by the Civil Courts to be disposed of, but he may discharge the accused under s. 195 if he thinks the evidence will not warrant committal. (Agra S. N. A., 21, 1863.)

A commitment made by a Magistrate, without a preliminary inquiry under Chapter XV, and merely upon proceedings held by a Civil Court, has been held to be illegal. (Cal. H. Ct., Radhanath Mojoomdar, Wyman, V, 19; see also Nujjum Ali, W. R., VI, 41; and Agra, VI, 115.)

In cases triable by a Magistrate, as ss. 205—211, Penal Code, the Civil Court can only proceed under this section, not s. 474. (Jud. Com., Punj. R, 15, 1862.)

This section refers to ss. 467—469, and it is only with regard to offences mentioned in those sections that the procedure authorised by this can be followed; all other offences, with the exception of those mentioned in Chapter X, must be proceeded against by complaint to the authorised officers. (Hamid-ood-deen, H. C., W. P., I, N. S., 6.)

Power of Court of Session as to such offences committed before itself.

472. A Court of Session may charge a person for any such offence committed before it, or under its own cognizance, if the offence be triable* by the Court of Session exclusively, and may commit, or hold to bail† and try,* such person upon its own charge.‡

In such case, the Court of Session shall have the same power of summoning,§ and causing the attendance at the trial* of any witnesses for the prosecution or for the defence, as is vested in a Magistrate by this Act.

Such Court may direct the Magistrate to cause the attendance of such witnesses on the trial.*

* S. 4.

† S. 388, &c.

‡ S. 198.

§ S. 350, &c.

"Under its own cognizance." This will include such cases as those where the fact, that the person about to be charged has committed the crime with which he is to be charged, is brought to the notice of the Court in the course of a judicial proceeding.

Offences in contempt of Court how to be disposed of.

473. Except as provided in sections four hundred and thirty-five, four hundred and thirty-six, and four hundred and seventy-two, no Court shall try‖

‖ S. 4.

any person for an offence committed in contempt of its own authority.

A presented a petition to a Sessions Judge, imputing sundry frauds to a vakeel; the Sessions Judge examined A on oath, and after inquiry, which terminated in the exculpation of the vakeel, charged and punished A for giving false evidence: held that, as Civil Judge, he had no jurisdiction to inquire judicially into the matter of the above petition. (S. N. A. Agra, Ghasee Ram, 1863, 52.)

Under this section it is not necessary that a preliminary investigation should be held by the Sessions Court itself, or through a Magistrate preparatory to putting an accused person on his trial for an offence committed before it and exclusively triable by it; it is sufficient that the Judge be satisfied that there is reasonable grounds for putting the accused on his trial. The trial should be held with the aid of Assessors. (Luteef Khan, S. N. A. Agra, 1862, 345.)

If the offence, though triable by the Court of Session, be committed before a Magistrate, invested with powers under s. 36, such Magistrate may, if the case is within his competency under that section, and the commitment of the case would be attended with great inconvenience, proceed to dispose of it himself, instead of committing it to the Sessions Court. (Jud. Com., Punjab, Cir. Ord. 27, 1865.) *This Circular Order must stand cancelled by the Code: no officer empowered under s. 36 is a Court of Session, all such are therefore bound by this section.*

Power of Civil Courts to complete investigation and commit to Court of Session.

474. In any case triable* by the Court of Session exclusively, any Civil Court, before which such offence was committed, may, instead of sending the case for inquiry† to a Magistrate, complete the inquiry† itself, and commit‡ or hold to bail§ the accused person to take his trial before the Court of Session.

* S. 4 and Sched. IV.
† S. 4.
‡ S. 198.
§ S. 388.

For the purposes of an inquiry† under this section, the Civil Court may exercise‖ all the powers of a Magistrate; and its proceedings in such inquiry† shall be deemed to have been held by a Magistrate.

‖ S. 21.

If a Civil Court sends a case for inquiry† and commitment‡ to a Magistrate, he is bound to receive and dispose of it; but if a Civil Court makes a commitment, it shall complete the inquiry itself.

Where the Civil Court resolves itself to commit direct to the Sessions Judge, it should be careful to follow strictly provisions of Chapters XV, XXV, XXVI, and the record of the committed case should be complete in itself and independent of the Civil record. (Agra, S. N. A., 349, 1862; Mudat Ali Khan, 396; Hazari Singh, *et passim.*)

In committing cases of forgery and perjury, officers should be careful to see that all the facts necessary under the Indian Penal Code to

constitute the offence charged are clearly set forth in the record of the preliminary inquiry, and that evidence of the same is recorded at the time of the preliminary inquiry, and will be forthcoming at the trial.

Forgery.—To this end, it is essential in cases of "forgery," and other like offences, that the forged document should be produced both at the preliminary inquiry and at the trial; and where an offence under s. 471, Penal Code, is charged, the place and occasion on which the using charged took place should be specified and proved. (S. N. A. Agra, Cir. Ord. 1, 1863.)

The mere making of contradictory statements will not amount to giving false evidence; it must be proved that, 1st, the accused was legally bound by an oath; 2nd, that the statement was false; 3rd, that the party making it knew or believed it to be false, or did not know it to be true. (S. N. A., Agra, Cir. Ord. 15, 1862; W. R., II, C. R., 47.)

In charges of giving false evidence, it is not necessary to show that the false statement was on a material point. (S. N. A. Agra., Cir. Ord. 15, 1862; W. R., II, C. L., 12, 20; Rookni Kant Mozoomdar, *ibid*, III, C. R., 58; Damodhar Ramchandra Kulkarni, Bom. H. C. Crown, V, 68.)

Making a false statement in other than judicial proceedings, as before a Justice of the Peace, in attesting a recruit, or before a marriage Registrar, is punishable under s. 181, Penal Code. (S. N. A., Agra, Cir. Ord. 38, 1862.)

* S. 474.

Procedure of Civil Court in such cases.

† S. 461.

‡ Ss. 35, 40.

475. When any such commitment* is made by order of a Civil Court, the Court shall frame a charge† in the manner hereinbefore provided, and shall send the same with the order of commitment and the record of the case to the Magistrate‡ of the District or other Magistrate of the first class; and such Magistrate shall bring the case before the Court of Session, together with the witnesses for the prosecution and defence.

There is a great difference in the powers of a Magistrate according to the mode in which a case is treated by the Civil Courts. If a Civil Court commit a person directly for trial, the Magistrate acts merely as a Ministerial Officer, and produces all parties and witnesses and the record before the Judge at the time of trial, and can do nothing more. If the case be sent to him for investigation, he acts as a Judicial Officer, inquires into the truth or falsehood of the charge, and, in the event of the evidence being insufficient, is at liberty to discharge the accused; or if other people are found to be concerned in the same offence, he can bring them to trial and frame the charge accordingly. (W. R., III, C. L., 1; Pandurang Mayral, *et al.*, Bom. H. C. Crown, V, 41.)

§ S. 198.

‖ S. 388, &c.

Court may exercise all powers of Magistrate as to binding over persons to give evidence.

476. Whenever any Court of Session or Civil Court commits§ or holds to bail‖ any person for trial under sections four hundred and seventy-two, four hundred and seventy-four, or four hundred and seventy-five, it may also

bind* over any person to give evidence, and for that purpose may exercise all the powers of a Magistrate.

* S. 360.

477. If any such offence, triable† by the Court of Session exclusively, be committed before a Magistrate† not empowered to commit for trial before a Court of Session, he shall send the case to a Magistrate‡ competent to make such commitment who shall proceed to pass such order in the case as he thinks fit.

Procedure where offence triable only by Session Court is committed before Magistrate not empowered to commit to such Court.

† Sched. IV.

‡ S. 143.

It does not seem to be essential that he send it to the Magistrate to whom he is subordinate, but this would ordinarily be the preferable course.

478. A complaint of an offence under section four hundred and ninety-seven of the Indian Penal Code shall not be instituted,§ except by the husband of the woman, or by any person under whose care she was living at the time when the adultery was committed.

Prosecution for adultery.

§ S. 139, &c.

The object of this section is that a specific charge of adultery shall be laid by the husband of the woman before such a charge can be entertained in a Criminal Court. It is not sufficient that the husband should institute a charge of some other offence than adultery, and incidentally during the hearing of the case urge that his wife is living in adultery with the person charged. The Court has not the power of amending the charge as laid and converting it into one of adultery, nor has it the power of adding a charge under s. 497 to the specific charge made by the husband of the woman. (Oudh Bk. Cir. XIII of 1871.)

479. A complaint of an offence under section four hundred and ninety-eight of the Indian Penal Code shall not be instituted, except by the husband of the woman or by the person having care of such woman on behalf of her husband.

Prosecution for enticing away a married woman.

PART XI.

PREVENTIVE JURISDICTION OF MAGISTRATES.

Notes by Select Committee on Chap. XXXVI.

We have added a chapter on the dispersion of unlawful assemblies, in which the duties of the Magistrate, the officer commanding the troops, and the soldiery are distinctly laid down.

NOTES BY MR. STEPHEN.

This chapter sets out in plain terms what is now the law (as I believe, though it is nowhere written down) as to the dispersion of unlawful assemblies by military force. It has often appeared to me to be a great hardship on military men that there should be no express written law laying down in precise terms their duty in relation to the dispersion of unlawful assemblies. The Queen's Regulations contain provisions on the subject; but they are not law,—at least they have not, as regards Civil Courts in England, the force of law. Various celebrated judgments have laid down the principles of the matter very clearly, but military officers can hardly be expected to be acquainted with the Law Reports. The results of the want of clear precise knowledge on this subject have often been deplorable. Thus, for instance, in the Gordon riots in 1780, London was at the mercy of a mob for two days, because no one chose to give orders or take responsibility as to the employment of the military. At the Bristol riots, fifty years later, a great part of the town was burnt to the ground, because an officer in command of a dragoon regiment did not know that it was his duty to order his men to charge when the town was burning, and there was no Magistrate to give him orders; and I have been told of several instances in which similar evils have occurred in India. In order to show that what is enacted in this Bill is no invention of mine, but merely a statement, with but very slight additions, of the law on this important subject which has long existed in England, I will, with your Lordship's permission, read the statement of the law made by Lord Chief Justice Tindal in his charge to the Grand Jury of Bristol at a Special Commission held in 1832 after the riots:—

"By the common law, every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the Magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled; he may stay those who are engaged in it from executing their purpose; he may stop and prevent others whom he shall see coming up from joining the rest; and not only has he the authority, but it is *his bounden duty* as a good subject of the King, to perform this to *the utmost of his ability*. If the riot be general and dangerous, he may arm himself against the evil-doers to keep the peace.

"It would undoubtedly be more prudent to attend and be assistant to the justices, sheriffs, or other ministers of the King in doing this, for the presence and authority of the Magistrate would restrain the proceeding to such extremities until the danger were sufficiently immediate, or until some felony was either committed, or could not be prevented without recourse to arms; and, at all events, the assistance given by men who act in subordination and concert with the civil Magistrate, will be more effectual to attain the object proposed, than any efforts, however well intended, of separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the Magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly; and he may be assured that, whatever is honestly done by him in the execution of that object, will be supported and justified by the common law. The law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation, and invested with the same authority to preserve the peace of the King, as any other subject. If the one is bound to attend the call of the civil Magistrate, so is the other; if the one may interfere for that purpose when the occasion demands it, without the requisition of the Magistrate, so may the other too; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same. Undoubtedly, the

same exercise of discretion which requires the private subject to act in subordination to and in aid of the Magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authority, the military subjects of the King not only may, but are bound to do their utmost, of their own authorities, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people. Still further, by the common law, not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer is called upon to do all that in them lies for the suppression of the riot, and each has authority to command all other subjects of the King to assist them in that undertaking. By an early Statute (13 H. IV, cap. 7), any two justices, with the sheriff or under-sheriff of the county, may come with the power of the county, if need be, to arrest any rioters, and shall arrest them; and they have power to record that which they see done in their presence against the law; by which record the offenders shall be convicted, and may afterwards be brought to punishment. And here I must distinctly observe, that *it is not left to the choice or will of the subject*, as some have erroneously supposed, *to attend or not to the call of the Magistrate, as they think proper*, but *every man is bound when called upon*, under pain of fine and imprisonment, *to yield a ready and implicit obedience to the call of the Magistrate, and to his utmost in assisting him to suppress any tumultuous assembly.*"

The only point on which we have—I will not say—altered, but somewhat amplied, the law of England, is in reference to the responsibility of soldiers for acts done in dispersing unlawful assemblies. The English law upon this point is somewhat indefinite, and it is by no means clear that, if a Magistrate calls upon an officer to disperse an assembly, and if the officer orders his troops to fire, and if the troops do fire, and if the Magistrate is mistaken in the view which he takes of the requirements of his case, that his orders protect the officer, or that the officer's orders protect the soldier. Military men may thus be placed between two conflicting authorities. The soldier may be liable to be tried by Court Martial for disobeying orders if he does not fire, and to be tried at the Assizes for murder if he does. I will not now go into the legal aspects of the matter, but it is by no means clear that, according to the law of England, the actual necessity for the order, as distinguished from the order itself, is not the condition of the legality of an order to attack a mob by military force. This, no doubt, arose from the extreme jealousy with which English lawyers have always regarded the interference of soldiers in civil matters, and this jealousy is to be explained by historical causes which happily do not exist in this country. I think I need hardly insist upon the monstrous injustice of the rule itself, if such it is. What possible means have subordinate officers or private soldiers of knowing whether it is or is not necessary to disperse a particular assembly or to use more or less force for that purpose? To make a common soldier a murderer for shooting people whom he is ordered to shoot, because a jury afterwards thinks that it was not necessary that they should be shot, seems to me as absurd as to say that every one who deals in any way with stolen goods is to be treated as a receiver whether he knew they were stolen or not. It will, I trust, be made perfectly clear by the provisions of this Bill that no one commits a crime by any act done by him in good faith for keeping the peace. Section 483 protects the Magistrate who orders an assembly to be dispersed by military force, if he regards the measure as necessary to the public security on reasonable grounds and in good faith. Sections 484 and 485 make it the duty of the officer in command to obey the Magistrate's requisition, and whilst they put upon him the responsibility, which he clearly ought to bear, of deciding on the manner in which the requisition is to be carried out, and of doing as little injury to person and property as is consistent with carrying it out effectually, they protect him from all responsibility for the order itself. In the same spirit, Section 486 protects every inferior officer and soldier for every act done in obedience to any order which he was bound to obey by the Mutiny Act or the Indian Articles of War.

We also propose that prosecutions for excess in acts done under these sections should not be permitted without sanction from the Local Government. My own personal experience has led me to feel, perhaps more deeply than most other persons, the necessity for such a provision as this, and has impressed me with the evils which may arise from defective state of the law, which leaves it in the option of private persons to carry on a series of proceedings, under no public check whatever, which might break a man's heart when he is perfectly innocent. I can imagine cases in which a man who had only done his duty might be baited to death by one prosecution after another, for murder, hurt, mischief and the like

nor do I see how the Government could protect him in the absence of this provision. I do not know that such cases have as yet occurred, but nothing is more likely than their occurrence, as Native lawyers become familiarised with English law, unless we provide for the matter beforehand.

The principle of sanction is well established in Indian law and is of great value, and this appears to me to be just the sort of case to which it ought to be applied.

CHAPTER XXXVI.—ss. 480—488.

Of the Dispersion of unlawful Assemblies.

Assembly to disperse on command of Magistrate or Police Officer.

* S. 137.

† S. 91, n. (a).

480. Any Magistrate or officer* in charge of a Police station may command any unlawful assembly,† or any assembly of five or more persons, likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

The omission to disperse will be punishable under s. 176 or s. 119, Penal Code.

The duties of a superior Police Officer, in cases of apprehended breach of the peace of a serious nature, are thus laid down in Act V of 1861, s. 17:—"When it shall appear that any unlawful assembly, or riot, or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police force, ordinarily employed for preserving the peace, is not sufficient for its preservation and for the protection of the inhabitants and the security of the property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred or is apprehended, it shall be lawful for any Police Officer, not below the rank of Inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police Officer may require, to act as Special Police Officers for such time and within such limit as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application."

Use of force to disperse.

‡ S. 137.

481. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer‡ in charge of a Police station may proceed to disperse such assembly by force, and may require the assistance of any person, other than any European or Native Troops of Her Majesty acting as such, for the purpose of dispersing it, and arresting the persons who form part of it.

Use of Military Force.

482. If an unlawful assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank, who is present, may cause it to be dispersed by Military Force.

When use of Military Force is not an offence.

483. No Magistrate shall be held to commit any offence by ordering the dispersion by Military Force of any assembly, the dispersion of which he regards, on reasonable grounds and in good faith (*a*), as necessary to the public security.

(*a*). Nothing is said to be believed or done in "good faith" which is done or believed without due care and attention.

Duty of officer commanding troops required by Magistrate to disperse assembly.

484. When a Magistrate determines to disperse an assemlby by Military Force, he may require any officer in command of any of Her Majesty's Troops, whether European or Native, to disperse such assembly by such force, and it shall be the duty of every such officer to obey every such requisition in such manner as in his discretion appears proper; but in doing so he shall use as little force, and do as little injury to person and property, as is consistent with dispersing the assembly and arresting and detaining such persons as he may be directed by the Magistrate to arrest and detain, or as it may be necessary to arrest and detain for the purpose of dispersing the assembly.

What acts done in obeying requisition not an offence.

485. No officer obeying any such requisition shall be held to have committed any offence by any act done by him in good faith in order to comply with it.

The definition of "good faith" will be found under s. 483.

Acts of inferior officers and soldiers done in obedience to order not an offence.

486. No inferior officer or private soldier shall be held to have committed any offence by any act done for the dispersion of any such assembly in obedience to any order which

CHS. XXXVI., XXXVII. SS. 486—489.

he was bound by the Mutiny Act or by the Indian Articles of War to obey.

Duty of Queen's officers to suppress assembly.

487. When the public security is manifestly endangered by an unlawful assembly, and when no Magistrate can be communicated with, any Commissioned Officer of Her Majesty's European or Native Forces may disperse any such assembly by military force; and in doing so, he shall have the same protection as a Magistrate, and all officers and soldiers acting under his orders shall have the protection mentioned in section four hundred and eighty-six; but as soon as such Commissioned Officer can communicate with any Magistrate, it is his duty to do so.

Sanction required to prosecutions for acts done under sections 481, 482, 484, and 487.

488. No prosecution against any Magistrate, officer or soldier, for any act done under the provisions contained in sections four hundred and eighty-one, four hundred and eighty-two, four hundred and eighty-four, and four hundred and eighty-seven, shall be instituted in any Criminal Court, except with the sanction of the Government of India, or the Government of Madras or Bombay.

CHAPTER XXXVII.—ss. 489—503.

Of Security for keeping the Peace.

Personal recognizance to keep the peace in cases of conviction.

489. Whenever a person accused of rioting,* assault,† or other breach of the peace, or with abetting‡ the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a Court of Session, or Magistrate of a Division of a District, or a Magistrate of the first class,

and the Court or Magistrate by which or by whom such person is convicted, or the Court or

* S. 91, n. (a).
† Sched. IV., s. 252.
‡ Sched. IV., s. 109.

Magistrate by which or by whom the final sentence or order in the case is passed, is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace,

such Court or Magistrate may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that, if the same be not given, the person required to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by a Magistrate, or three years if the order be passed by the High Court or by a Court of Session, unless within such period such person execute such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance, shall commence when he is released on the expiration of his sentence.

An order under this section must be passed at the time of deciding the case. If no order is then made, and subsequent proceedings are considered necessary, they must be taken under s. 491. (S. W. R., XV, 56.)

The High Court, Calcutta, have ruled that, where an offence in itself is not necessarily a breach of the peace, but the evidence discloses intentions of breaking the peace, a Magistrate, on conviction, is quite justified in taking formal engagements under this section. (Gendoo Khan, W. R., VII, 14.) But a Magistrate cannot hereby order a person to abstain in future from doing an act which has caused a breach of the peace under the plea that the repetition of the offence will cause a second breach of the peace. (Bhaskar K. Karkar, Bom. H. Ct. Crown, 1.)

For form of formal engagement, see Schedule II, attached to this Act.

Cash cannot, (Jud. Comr., Punjab, 1863) can (Calcutta High Court, Krishtendro Roy, W. R., VII, 30) be accepted from a person required to find security to keep the peace.

From the wording of s. 399 it would appear that cash may be accepted. (S. 399.)

The Oudh Commissioner, in his Book Circular CXXI of 1869, finds fault with the way in which the provisions of this chapter are carried out, and says generally both sides, or both persons, are bound over in the same amount, whereas it must almost invariably happen that one side or one person is more in the wrong, or more aggressive than the other, and should consequently be bound over in a heavier penalty. Indeed, it may often be right to demand recognizance from one side only; and then not to call on the other to furnish any security at all, much less to the same amount, may be a simple act of justice. It saves time and trouble, however, to bind both parties over in the same sum, no matter what the relative culpability may be. Thus justice is sacrificed to indolence.

In Queen *v.* Anund Chunder Chuckerbutty, where Sessions Judge acquitted accused, because the charge against them was not proved, it was held that it was no longer necessary to take from them the recognizances required by the Magistrate. (S. W. R., III, 33.)

Where convicting officer is not in charge of division of district nor a Magistrate of first class.

When any accused person is convicted of any offence specified in this section by a Magistrate neither in charge* of a Division of a District nor of the first class,† such Magistrate, if he considers it just and necessary to require a personal recognizance for keeping the peace from the person so convicted, shall report the case to the Magistrate‡ of the District, the Magistrate of the Division of the District, or to a Magistrate of the first class to whom such Magistrate is subordinate; and the Magistrate to whom the case is so reported shall deal with the case as if the conviction had been before himself.

* S. 40.

† S. 20.

‡ Ss. 35, 40.

In any case where the order is not made at the time of signing, or by the Court which signs, the judgment, the convict must be produced before the Magistrate who adds the order to enter into a personal recognizance to the original sentence.

Security to keep the peace.

490. Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court or Magistrate empowered to require a

personal recognizance may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by the Magistrate* of the District, Magistrate of a Division of a District, or by a first class Magistrate, or three years if the order be passed by the High Court or by a Court of Session.

* Ss. 35, 40.

491. Whenever a Magistrate† of a Division of a District, or a Magistrate of the first class, receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, he may summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace, with or without sureties, as such Magistrate thinks fit.

† S. 40.

Summons to any person to show cause why he should not give bond to keep peace.

EXPLANATION I.—A summons calling on a person to show cause why he should not be bound over to keep the peace, may be issued on any report or other information which appears credible and which the Magistrate believes; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.

EXPLANATION II.—A Magistrate may recall a summons issued under this section if he thinks proper.

A Police report, a report of a Subordinate Magistrate, a sworn deposition that a person apprehended violence and the like, may be credible information, but a mere complaint, unsupported by any deposition or corroborative evidence, is certainly not such.

There should always be evidence before the Magistrate prior to his acting on this section, and on this he should adjudicate judicially before taking a bond from any one. The *onus* of proof lies always on the person on whose complaint the summons was issued. (Nirunjun Sing, N. W. P., 27th November 1870.)

In the North-West Provinces, *In re* Nusceroodeen, 14th December, 1870, it was decided that to adjudicate judicially was to adjudicate as in all

other cases, *after taking evidence in the presence of the person charged, and giving him an opportunity to cross-examine the witnesses.* See also Nursing Narain, S. W. R., X; 1, Full Bench R., XII, 60; and s. 515.

Where both disputing parties state that men are being collected by their opponents for the purpose of committing a breach of the peace, a Magistrate is justified, without inquiring who was the aggressor, or who the aggrieved, to proceed under s. 518, and take whatever steps are in his opinion necessary to prevent a breach of the peace.

It is necessary that summonses should duly issue to the witnesses, and they should be examined *in the presence of the parties.* The accidental presence of any agent is not, legally speaking, such presence before which an examination is legally sufficient.

Form of summons.

492. Such summons shall set forth the substance of the report or information on which it is issued, the amount of the bond, and the term for which it is to be in force, and, if security is called for, the number of sureties required, and the amount in which they are to be bound respectively, and the time and place at which the person summoned is required to attend.

EXPLANATION.—When the parties are present in Court no summons is necessary, but the person to whom a summons would have been issued must have an opportunity to show cause why he should not be bound.

Penalty of bond.

493. The bond shall be in the Form (E) given in the second schedule, or to the like effect; and its penalty shall be fixed with a due regard to the circumstances of the case and the means of the party.

The amount in which the sureties shall be bound shall not exceed the penalty named in the bond.

From the Form given, and also from the word of s. 502, it is evident that the bond should be to keep the peace in general, not with any given person or persons. The commission, abetment or attempt to commit *any offence whatever* is a breach of the bond.

Warrant of arrest.

494. If the person summoned does not attend at the time and place named in the summons on the day appointed, such Magistrate, if satisfied that the summons has been duly served, may issue a warrant for his arrest:

Provided that, whenever it appears to such Magistrate, upon the report of a Police Officer or upon

other* credible information (the substance of which report or information shall be recorded), that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, the Magistrate may at any time issue a warrant for his arrest.

* S. 491, n.

Magistrate may dispense with personal attendance of person informed against.

495. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person informed against under section four hundred and ninety-one, and may permit him to appear and enter into the required security, or show cause against such requisition, by an agent† duly authorized to act in his behalf.

† S. 186, n.

Discharge of person informed against.

496. If on the appearance of such person informed against, or of his agent, if he is permitted to appear by agent, the Magistrate is not satisfied that there is occasion to bind such person to keep the peace, the Magistrate shall direct his discharge.

Non-compliance with order to give bond.

497. If the Magistrate is satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if such person fails to comply with the order, the Magistrate may order him to be kept in simple imprisonment until he furnish the same.

Time for which person may be bound to keep peace.

498. The period for which the Magistrate may bind a person to keep the peace, with or without security, shall not exceed one year.

Limit of imprisonment under section 497.

When a person is imprisoned under section four hundred and ninety-seven, he shall not be detained by authority of the Magistrate beyond the term of one year, and shall be released whenever, within that term, he complies with the order.

Extension of time for which person may be bound.

499. Whenever it appears to the Magistrate that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session.

Such Court, after examining the proceedings of the Magistrate, and making such further inquiry as it thinks necessary, may, if it see cause, authorize the Magistrate to extend the term for a further period not exceeding one year.

If such person fails to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate under the orders of the Court of Session directs, he may be kept in simple imprisonment for such further period, or until, within that period, he gives such bond.

EXPLANATION.—When the subject of dispute, or ground for apprehension, is the same as that on which the first order was passed, the Magistrate must proceed under this section if the first bond is still in force, and not under section four hundred and ninety-one.

Deputy Commissioners invested with extraordinary powers under s. 36 are not Courts of Session within the meaning of this section. See Jud. Com., Oudh, Cir. Ord. 6., 1867.

In the case of Kalinath Biswas, S. W. R., XV, 18, the Calcutta High Court ruled that, where A, before the expiration of a bond of security for one year, was found to be involved in fresh disputes likely to involve a breach of the peace with parties other than those in respect of whom he had been first bound, the Magistrate must proceed under this section.

Discharge of recognizances.

500. The Magistrate* of the District may, if he see sufficient cause, discharge any recognizance and surety for keeping the peace taken by him, or by any Magistrate subordinate† to him, or by his predecessor under the preceding sections, and may order the release of the person confined for default

* S. 35.

† S. 41.

in entering into such recognizance or giving such security.

Where a Magistrate, who apprehended a breach of the peace, eventually discharged the recognizances which he had compelled the parties to give, it was held that he exceeded his jurisdiction when he also gave direction as to the disposition of the property in dispute between the parties. (Chowdry Nil Kanth Pershad, W. R., XIII, 44.)

Discharge of sureties.

501. A surety for the peaceable conduct of another person may at any time apply to the Magistrate to be relieved from his engagement as surety.

On such application being made, the Magistrate shall issue his summons or warrant in order that the person, for whom such surety is bound, may appear or be brought before him.

On the appearance of the person to such warrant, or on his voluntary surrender, the Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and in default thereof, shall order him to be kept in simple imprisonment.

Recovery of penalty from principal.

502. Whenever it is proved before the Magistrate that any recognizance or other bond taken under this chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by such recognizance or bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause be not shown, and the penalty be not paid, the Magistrate shall proceed to recover the same by issuing a warrant for the attachment* and sale of any of the moveable property belonging to the person bound by the recognizance or bond.

* S. 172, n.

Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued; and it shall authorize the distress and sale of any moveable property belonging to the person bound, without the jurisdiction of the said

Magistrate, when endorsed by the Magistrate* of the District in which such property is situated.

* S. 35.

If such penalty be not paid and cannot be recovered by such attachment and sale, such person shall be liable to imprisonment by order of the Magistrate in the civil jail for a period not exceeding six months.

The penalty shall not be enforced until the person bound has had an opportunity of showing cause, and until the breach of the conditions has been proved.

The commission, or attempt to commit or abetment, of any offence whatever, and wherever it may be committed, is a breach of the bond.

Proceedings under this chapter may be taken, either in the district in which the breach of the peace is apprehended, or where an offence has been committed in breach of the bond, or in any district where the person it is desired to bind may be.

Recovery of penalty from surety.

503. Whenever it is proved before the Magistrate that any bond with a surety has been forfeited, the Magistrate may at his discretion give notice to the surety to pay the penalty to which he has thereby become liable, or to show cause why it should not be paid.

If no sufficient cause is shown, and such penalty is not paid, the Magistrate may proceed to recover payment of the penalty from such surety in the same manner as from the principal party.

Notes by Select Committee on Chap. XXXVIII.

We have distinctly provided that the provisions for taking security for good behaviour shall not apply to European British subjects; such cases appear to be sufficiently and more appropriately dealt with under the European Vagrancy Act.

We have restricted the power to make orders to prevent obstructions and prohibit nuisances to Magistrates of Districts and Magistrates of Divisions of Districts, and to such Magistrates as may be specially authorized to exercise this power.

CHAPTER XXXVIII.—ss. 504—517.

Of Security for Good Behaviour.

When Magistrate may require security for good behaviour for six months.

504. Whenever it appears to the Magistrate of the District, or to a Magistrate of the first class, that any person is lurking (*a*) within his jurisdiction, or that there is within his jurisdiction a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may require such security for such person's good behaviour (*b*) for a period not exceeding six months as to him may appear good and sufficient.

(*a*). A person under sentence for theft cannot be said to be lurking, and should not be dealt with under this section. See s. 94, n. (*b*), and s. 506, n.

This Chapter does not apply to European British subjects. They should be dealt with under the Vagrancy Act.

Cash may not be accepted in lieu of security under this Chapter. (S. 399.)

(*b*). It is illegal to call upon an accused person to find security for future good behaviour under this chapter, in addition to a sentence passed upon him for a specific offence.

Binding of sentenced person.

If in any case under this or the two following sections, the person to be bound is under sentence for an offence, he must be brought upon or after the expiration of his sentence for the purpose of being bound.

When Sessions Judge or unauthorized Magistrate thinks a person should be bound.

If a Sessions Judge, or Magistrate of the second or third class, considers, from evidence taken in any proceedings before him, that any person should be required to enter into

a bond to be of good behaviour, he may send such person in custody to a competent* Magistrate.

* Ss. 26, 28, 30.

Powers of Magistrate of Division of District being a Magistrate of the second class to inquire.

A Magistrate in charge of a Division of a District, exercising the powers of a Magistrate of the second class, may make any inquiry (*c*) necessary under this chapter, and may submit his proceedings to the Magistrate of the District, who may pass such order on them, either directing the person whose character was inquired into to furnish security or not, as he thinks fit.

(*c*). In case Abdoolla, North-West Provinces, 4th November 1870, it was ruled that a Magistrate of District or of Division of District is empowered to transfer cases under this chapter to a subordinate empowered to hear them.

Central Provinces Police Circular Order No. 19 of 1870 draws attention to gangs of kidnappers, chiefly Kunjurs and Koochbundies, who are practised kidnappers of young girls for immoral purposes, and who ply their nefarious trade chiefly in places through which the railway passes. The children were mostly friendless orphans, the kidnapper women, the inducements promises of good food, fine clothes, and ornaments. Occasionally drugged sweetmeats were given them. All such tribes should be carefully examined to see if they have any stolen children in their possession: children found under suspicious circumstances should be interrogated apart from the people with whom they are found. The Railway Police should look out for all children taken away against their will and narrowly watch carriages set apart for females, both when leaving and arriving at a terminus and at intermediate stations. All gangs of wandering tribes to be carefully watched till Police are satisfied they have no stolen children in their possession.

With reference to Bunjaras, Central Provinces Book Circular VII of 1867 directs as follows:—

Registers of all tandas encamped during the rains, within the circle of a station-house, should be kept by the chief constable, but this is not generally done. These should show accurately the number of men, women, and children in each tanda. The chief constable should frequently pay them a visit, and ascertain whether they are at home, making a report of each visit in his Roznamcha. The absence of a large proportion of the men from a tanda would naturally arouse his suspicions, and he would endeavor to ascertain where they had gone, and on what errand. The malgoozar of the land on which every tanda is encamped should be directed to give early intimation to the Police of any movement of the tanda.

When Magistrate may require security for good behaviour for one year.

505. Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief,

or a receiver of stolen* property, knowing the same to have been stolen,

or of notoriously bad livelihood, or is a dangerous character,

such Magistrate may require similar security for the good behaviour of such person for a period not exceeding one year.

* Schd. IV., s. 410.

After expiration of the term of confinement in default of security, a second security cannot be demanded, except upon some new proof of bad livelihood, or that a person is not capable of following an honest calling.

If upon being set at liberty he should return to his former course of life, and it appears that he continues to be a person whom it is dangerous for the community to have at large, he may be brought before a Magistrate, and, after evidence of his proceedings has been laid before such Magistrate, a further order may be passed, ordering him to give fresh security. (Cal. H. Ct., Sheikh Himayut, July 29th, 1862; also Juswunt Singh, W. R., VI, 18.)

The Calcutta High Court (Beharee *alias* Kureem Bux, W. R., III, 23), after acquitting a person convicted by the Sessions Judge of an attempt to commit murder, directed the Magistrate to take security from him, as the Court considered that he was of a character so desperate as to make his release without security hazardous to the community.

A is ordered to suffer imprisonment in default of furnishing security for good behaviour, in addition to being imprisoned for an offence under the Penal Code. The order for imprisonment in default must run from date of sentence, and cannot be directed to run from expiry of punishment for the offence committed. (Joral Gujur, 3rd June 1871, N. W. P.) See s. 504 *ad finem.*

The Judicial Commissioner, Oudh (Circular Order 47, 1865), has ruled that it is not necessary to prove specific criminal acts against a person charged under this section,—it is sufficient that he be shown to be by repute a bad character. But as laid down, *In re* Budler, N. W. P., 13th December 1870, there must be evidence before the Magistrate, and that evidence must be legally sufficient to establish the fact that the person charged is by repute a bad character. Such corroborative evidence should always be that of persons who have a personal acquaintance with or knowledge of the person arrested, in order that they may be able to speak to the prisoner's general character. (C. P. Bk. Cir. IX of 1868.)

A Magistrate cannot require sureties under this section on the mere report of a Police officer (Alum Sheikh, W. R., V, C. R., 2), nor on the fact of the accused having been security for several bad characters; this in itself is no evidence of notoriously bad livelihood (Futteh Sing, S. N. A., Agra, 1865, 158). Security is to be taken under this section where the bad livelihood is a livelihood obtained by illegal and dishonest means, and not where there is a suspicion merely of a man being likely to commit an offence; where security in a case of illicit intercourse was required from the paramour, the order was quashed. (Kishen Dass, S. N. A., Agra, 1865, 281.)

Where a person is adjudicated to be a person of notorious bad character after having been tried for dacoity, the evidence taken in the trial for dacoity should not be used against the accused with reference to the accusation under this section. (Rojoni Kant Bhoomick, S. W. R., XIII, 24.)

CH. XXXVIII. ss. 506, 507.

Procedure where security required for more than one year.

506. Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief,

* Sched. IV., s. 410.

or a receiver of stolen* property, knowing the same to have been stolen,

or of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community,

he shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number, character, and class of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour; and if such person does not comply with the order, the Magistrate shall issue a warrant directing his detention pending the orders of the Court of Session.

If there was any fresh cause for ordering security, a Magistrate may take security to keep the peace for one year, though in respect of some former and different matter security had been taken from the same party. But where the cause of a second order is the same as that which induced the Magistrate to move in the first matter, he can only proceed under this section. (Diego de Silva, W. R., VII, C. R., 24; Bunker Singh, *et al.*, *Ibid*, 26.)

The surety for another's good behaviour under this chapter should be required to appear in person before the Magistrate; and that officer should satisfy himself, either through the agency of the Police, or otherwise, that the surety really is the man whom he represents himself to be.

S. 510 provides that imprisonment under that section may be rigorous or simple, as the Court in each case directs.

Proceedings to be laid before Court of Session.

507. If a person required to furnish security, under the provisions of the last preceding section, does not furnish the same, or offers sureties whom the Magistrate sees† fit to reject, the proceedings shall be laid, as soon as conveniently may be, before the Court of Session.

† S. 516.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass orders on the case, either confirming, modifying or annulling the orders of such Magistrate, as it thinks proper.

When the Sessions Court has disposed of the case, it should forward a copy of its order, together with a warrant for execution, to the Magistrate of the District or other officer in charge of the jail, who should proceed to have such order carried out according to the terms of the warrant. (W. R., IX, C. L., 1.)

Court of Session may require security for period not exceeding three years.

508. If the Court of Session does not think it safe to direct the immediate discharge of such person, it shall fix a period for his detention, not exceeding three years, in the event of his not giving the security required from him.

Contents of order for security.

509. Whenever security for good behaviour is required by the Court of Session or by a Magistrate, the amount, the security, the number and description of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order.

The security-bond shall be in the Form (G) given in the second schedule, or to the like effect.

An order under this section should state the number of sureties required from the defendant. The object of the law is that *sureties* should be responsible for the good behaviour of a person, and not that he deposit the amount of his security in cash. (Sheo Buksh, N. W. P., 15th July 1870. See also s. 399.)

The Oudh Government, in Book Circular XXXI of 1869, order that the surety for another's good behaviour should be required to appear in person before the Magistrate; and that officer should satisfy himself, either through the agency of the Police, or otherwise, that the surety really is the man whom he represents himself to be.

Imprisonment in default of security.

510. In the event of any person, required to give security under the provisions of this chapter, failing to furnish the security so required, he shall be committed to prison until he furnish the same:

Term of imprisonment.

Provided that no such person shall be kept in prison for a longer period than that for which the security has been required from him.

Imprisonment under this section may be rigorous or simple, as the Court or Magistrate in each case directs.

An escape, or attempt to escape from any custody in which a person is lawfully detained for failing to furnish any security required under Chapter XIX of this Code, is punishable with imprisonment, either simple or rigorous, for one year, or with fine, or both. (Act IV, 1867, s. 3.)

Release of prisoners under requisition of security.

511. The Magistrate of the District may, at any time, exercise his discretion in releasing, without reference to any other authority, any prisoner confined under requisition of security for good behaviour, whether by his own order, or that of his predecessor in office, or by the order of any officer subordinate to him, provided he is of opinion that such person can be released without hazard to the community.

Report in case of prisoner under requisition of security by order of Court of Session.

512. Whenever the Magistrate of the District is of opinion that any person confined under requisition of security for good behaviour by order of a Court of Session, can be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of such Court of Session.

Discharge of surety.

513. A surety for the good behaviour of a person may at any time apply to a competent Magistrate* to be relieved from his engagement as such surety.

* S. 504.

On such application being made, such Magistrate shall issue his summons or warrant in order that such person may appear or be brought before him.

On the appearance of such person pursuant to such summons or warrant, or on his voluntary surrender, such Magistrate shall direct the engagement

of the surety to be cancelled, and shall call upon the person so appearing or surrendering to give fresh security, and, in default thereof, shall commit him to custody.

514. Whenever a competent Magistrate* is of opinion that, by reason of an offence proved to have been committed by a person for whose good behaviour security has been given, subsequent to his having given such security, proceedings should be had upon the bond executed by the surety, such Magistrate shall give notice to the surety to pay the penalty, or to show cause why it should not be paid.

* S. 504.

Recovery of penalty from sureties.

If such penalty be not paid and no sufficient cause for non-payment be shown, such Magistrate shall proceed to recover the penalty from such surety by issuing a warrant for the attachment and sale of any moveable property belonging to him. Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued; and it shall authorize the distress and sale of any moveable property, belonging to such surety, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid, and cannot be recovered by such attachment and sale, the surety shall be liable to imprisonment by order of such Magistrate in the Civil jail for a period not exceeding six months.

See notes under s. 415.

No Magistrate has power to forego any portion of the penalty leviable under this section; if he considers that any portion should be remitted, he should address the Local Government for remission under s. 322.

515. The provisions of sections four hundred and ninety-two and four hundred and ninety-four, relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, when such party is not

Issue of summons and warrant of arrest.

in custody, shall apply to proceedings taken under this chapter against persons required to give security for their good behaviour.

Place where proceedings may be held.

Proceedings may be taken under this chapter, against persons amenable to its provisions, in any district where they may be.

Manner of taking evidence under Chapter XXXVII or this chapter.

Any evidence,* taken under Chapter XXXVII or this chapter, shall be taken as in cases usually heard by a Magistrate upon summons.†

Previous convictions may be proved.

Any previous conviction‡ against the person to be bound may be proved on proceedings held under this chapter.

* S. 4, n. (*d*).

† Chap. XVI.

‡ S. 326.

The accused *must* be confronted with the witnesses against him and allowed every opportunity of cross-examining them. (Shunker, N. W. P., 7th November 1870.)

Sureties may be rejected on the ground of character.

516. A Magistrate may refuse to accept any surety offered under this chapter on the ground that such surety is an unfit person.

Chapter not applicable to European British subjects.

517. The provisions of this chapter shall not apply to European British subjects.

Notes by Select Committee on Chap. XXXIX.

We have provided, in local nuisance cases, for the mode in which the Jury shall be summoned, and in which its duties shall be performed.

CHAPTER XXXIX.—ss. 518—529.

Local Nuisances.

This chapter applies to thoroughfares or public places only, and has no reference to the interior of private houses (Eshan Chunder Banerjee, W. R., VIII, Civil, 240), nor with private paths; and where the Magistrate did not treat the path as a public way, a suit will lie to set aside his order (Gooro Churn Goon, *Ibid*, 269). So also where a Magistrate ordered that an old public road be kept as widened by trespassers. (Azeezoollah Gazee, *Ibid*, VII, 48; Beharee Loll, S. D. A., Agra (Full Bench), 1864, 519.)

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A Magistrate may not prohibit the sounding of a *sankh* at a reasonable distance from a mosque, as long as the right to sound it is not exercised solely or chiefly with a view of disturbing the worship, or offending the religion of the Mussalman frequenters of the mosque: even should it be done with this object, it is better for the Magistrate to proceed under Chapter XV, Penal Code. (Mungroo, S. D. A., Agra, July 21, 1864.)

A similar case is that of Ram Chunder Geer Ghosain, W. R., VI, 40.

A Ghosain went forth to pay a visit, accompanied by a body of retainers carrying horns which were blown for his glorification, and to the annoyance of another person with whom he was not on good terms. The Magistrate, under this section, ordered that neither party should use any musical instruments in the neighbourhood of the house of the other. This order was pronounced to be open to objection, and was modified, the parties being forbidden to use horns or other musical instruments *for the purpose of mutual offence* in the neighbourhood of each other's house. (Ram Chunder Geer Ghosain, W. R., VI, 40.)

Magistrate may issue orders to prevent obstructions, danger to human life, or riots.

518. A Magistrate* of the District, or a Magistrate of a Division of a District, or any Magistrate† specially empowered, may, by a written order, direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate considers that such direction is likely to prevent, or tends to prevent,

obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any persons lawfully employed,

or danger to human life, health, or safety,

or a riot‡ or an affray.

* Ss. 35, 40.

† Ss. 23, 25, 27, 28.

‡ S. 91, n. (*a—d*).

EXPLANATION I.—This section is intended to provide for cases where a speedy remedy is desirable, and where the delay, which would be occasioned by a resort to the procedure contained in section five hundred and twenty-one and the next following sections, would, in the opinion of the Magistrate, occasion a greater evil than that suffered by the person upon whom the order was made, or would defeat the intention of this chapter.

EXPLANATION II.—An order may, in cases of emergency or in cases where the circumstances do not admit of the serving of notice, be passed *ex*

parte, and may in all cases be made upon such information as satisfies the Magistrate.

EXPLANATION III.—An order may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

EXPLANATION IV.—Any Magistrate may recall or alter any order made under this section by himself or by his predecessor in the same office.

See n., s. 491.

Where a Magistrate proceeding under this section decides in favor of one party as being in possession, the High Court cannot reconsider the decision and decide what party is in actual possession. (Bharut Chunder Bose, S. W. R., XV, 86.)

"Ss. 518, 519 are not in conflict with one another, and are not, properly speaking, alternatives. The essential difference between them is that s. 519 expressly directs that the injunctional order of the Magistrate should, in cases to which that section applies, be an order *nisi*, so to speak, that is, an order accompanied by a condition that it is not to operate, if the party show cause, within a specified time, why the order should not be obeyed: while, on the other hand, s. 518 speaks only of an order absolute, without saying that the party is to be afforded an opportunity for showing cause against the order.

"If any part of the ground covered by s. 518 also falls within the scope of s. 519, then the Magistrate must conform to the more particular directions of the latter section, and it is not sufficient that he should comply merely with the general words of the former, that is, he cannot choose whether he will issue an order without a condition, or whether he will issue an order with a condition, but is bound in all cases which fall within the operation of s. 519, to comply with the provisions of that section."

So also Agra S. N. A., Cir. 15, and Oudh 69 of 1865. Emergency is after all the grand test.

A Magistrate is not competent to order the owner of a tank in the dry bed of a river to destroy its banks, because they are an obstruction to the public in their lawful enjoyment of the river in the rainy season, and because, by stopping the water, the banks interfere with the drainage of the country, and affect the health of the villagers in the surrounding places, and tend to injure the crops, and lessen the value of the land. (Golam Durbesh, W. R., X, 36.)

Where A complained that certain timber of his put in a certain place had been removed by B, and B answered that the timber had been cut by himself and stacked where he always put his timber, the Magistrate ought to have investigated the case as one of theft, and not passed an order under this section. (Kartik Chunder Bal, S. W. R., XV, 56.)

This section, Shib Chunder *v.* Saadut Ally Khan, &c., does not authorize a Magistrate to interfere with the exercise of any of his ordinary rights by a landholder, merely because such exercise may require vigilance on the part of the Police, and may, in the absence of such vigilance, lead to an affray Now, amongst the rights of landholders is that of establishing hauts in any portion of their estates to be held on whatever days seem most advantageous to them; and this right is not only an ordinary incident to the right of property, but it

is in many instances a most valuable right. It is consequently not one with which the Magistrate can interfere.

Bombay High Court, in case of Ramchandra Ekanath, VI, 41, delivered judgment as follows:—In this case the accused were in possession and management of the temple, and the Magistrate considered, and we think he reasonably considered, that the direction given for widening and heightening the door would prevent danger to human life or safety; and therefore the order is within the terms of the section. The Magistrate who heard the appeal in this case has found the property to be public, and in dealing with the case, as brought before us, we must take the fact to be as found by him. The contention that s. 518 does not apply to private property does not arise here; since the present case cannot be considered as one of private property, and the injury as one to private persons. Even if the property was private, we think that the section would apply under the circumstances of this case; as the building is a place open to all the Hindu public who are invited to it, and who have a right to go there on paying the customary offerings to the idol. It is contended that there should be some limit to the application of the section, but it is not necessary for us to fix that limit since it is always to be remembered that this power is discretionary, and I am not at all certain that the discretion of the Magistrate is not intended to be the limit. In point of law no ground is shown in this case for our interference.

Magistrate may prohibit repetition or continuance of public nuisances.

519. A Magistrate* of the District, or a Magistrate of a Division of a District, or any Magistrate† specially empowered, may enjoin any person not to repeat or continue a public nuisance, as defined in section two hundred and sixty-eight of the Indian Penal Code or under any local or special law.

* Ss. 35, 40.

† Ss. 23, 25, 27, 28.

S. 268, Penal Code.

The occupier of the land on which the nuisance exists is the responsible party in most cases, not the landlord. (Brojo Lall Mitter, W. R., VIII, C. R., 45.)

Act XVIII, 1850, will not protect Judicial Officers in any arbitrary exercise of the powers given by this section; if they find they have been wrong in issuing an order, they can refrain from enforcing it—Jina Runchod, Bom. H. Ct., I, 1. A Magistrate, as President of a Municipal Committee, has no power to issue an order forbidding as a nuisance an act not included in the rules passed under the Municipal Act. (Sham Soonder, H. C., W. P., 1866, 34.)

Person includes any company or association, or body of individuals whether incorporated or not. (S. II, Act I, 1868.)

Orders not judicial proceedings.

520. Orders made under sections five hundred and eighteen and five hundred and nineteen are not judicial‡ proceedings.

‡ S. 491, n.

CH. XXXIX. s. 521.

Magistrate may order removal of nuisances.

521. Whenever a Magistrate* of the District, or a Magistrate of a Division of a District, or, when empowered by the Local Government in this behalf, a Magistrate† of the first class, considers that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place,

or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place,

or that the construction of any building, or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented,

or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary,

or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public—

such Magistrate may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank, or well, as aforesaid, calling on him, within a time to be fixed in the order,

to remove such obstruction or nuisance,

or to suppress or remove such trade or occupation,

or to stop the construction of such building,

or to remove it,

or to alter the disposal of such substance,

or to fence such tank or well as the case may be,

or to appear before himself or some other Magistrate of the first or second class within the time mentioned in the order, and show cause why such order should not be enforced.

* Ss. 35, 40.

† Ss. 27, 28.

Order to be a judicial proceeding.

The issue of an order under this section shall be a judicial proceeding,‡ whether or not evidence§ is taken therein.

‡ S. 491, n.

§ S. 4, n. (d).

Order to be in the alternative.

Such order may be issued on a report or other information which the Magistrate believes, and shall direct the person to whom it is addressed, either to obey it or to show cause why it should not be obeyed. The order shall not be made absolute, except as is hereinafter provided, until opportunity has been given to the person affected to show cause.

EXPLANATION.—A "public place" includes property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

The plaintiff sued a Magistrate for damages occasioned to him by the cutting of his bund at the Magistrate's order. The Lower Appellate Court found as a fact that the Magistrate proceeded under s. 521, &c., that he called on the plaintiff to show cause, and did hold an inquiry through the Police. The High Court, in special appeal, accepting the fact as found by the Lower Court, held, that the Magistrate was acting judicially and with jurisdiction (though, under the circumstances disclosed, carelessly and irregularly), and was therefore protected from an action for damages. (Tarak Nath, B. L. R., VII, 449.)

The condition and the conduct of an old-established slaughter-house is proved to be, in fact, an offensive nuisance and dangerous to the health of neighbours, but the evidence did not show it was in a worse condition than at any time since its establishment. The occupiers, when summoned, refused to ask for a Jury under s. 523; the Magistrate was justified in suppressing the trade or occupation under s. 521. No length of enjoyment can legalize a public nuisance. (Mahomed Ali, B. L. R., VII, 499.)

In consequence of the large number of accidents occasioned by persons falling into tanks and wells, the Chief Commissioner is desirous that the provisions of s. 521 should be enforced in regard to such places,—that is, that every tank or well, adjacent to any public thoroughfare, should be fenced in such a manner, as to prevent danger arising to the public. By the word "tank" is meant a pond or other deep excavation; not ordinary jheels, for irrigation purposes, which are natural depressions and shallow at the edges; if the person in possession of, or having control over, such tank or well, shall not obey the order passed under s. 501, or show cause, or petition for a Jury against the same, he is liable under s. 525 to the penalty prescribed in that behalf in s. 188 of the Penal Code; and the Magistrate may also proceed to carry out the order at his expense. (Oudh, Chief Commissioner.)

The order ought to contain a clear statement of facts which the Magistrate, in the exercise of his judicial discretion, considers to constitute the material facts of the case, and upon the footing of which he has made the order. (*In re* Harimohun Mundul, B. L. R., I, 23.)

The order should be simply to remove the nuisance, and should not dictate the manner in which it should be removed. Thus, if a Magistrate declare that a tank is a nuisance within the terms of this section, he should leave it to the discretion of the owner to remove

such nuisance either by filling up the tank, or by excavating it to a greater depth. (Pall Doss, W. R., X, 51.)

A Magistrate, having once commenced proceedings under this section, cannot take up the matter summarily under s. 508. He is bound to act in the manner laid down in this chapter. (Pitti Singh, W. R., VIII, 37.)

Immediate action is allowable only in the cases provided for in s. 528. In all other cases the forms prescribed in this chapter must be carefully observed. (Rajah Indoobhoosun Deb Roy, W. R., I, 8.)

Summary orders to Police officers to remove public nuisances are illegal. The procedure in this chapter should always be followed. (Damodur Dass, N. W. P., 13th December 1870.)

Where defendants appeared on notice given to reply to an order to remove a bund and stated facts which showed that they had a legal prescriptive right to maintain the bund as it stands; and no evidence was given to contradict it, the Calcutta High Court held that their statements should have been received. The injury caused to the road by the bund should have been clearly shown to be an injury to the right of way, and the public impeded in the exercise of their legal rights. (Bhyro Dayal Singh, B. L. R., III, 4.)

Where the petition is for the removal of an obstacle from the public thoroughfare, it is the duty of the Court first to examine whether it is a public thoroughfare, and as it finds on this point to proceed or abstain from proceeding.

A party, feeling aggrieved by an order passed by a Magistrate under s. 308, cannot file a suit for damages against the persons who instituted proceedings before the Magistrate, unless he can show that, in taking them, they were actuated by malicious motives against him, or intended wrongfully to injure him. (Chintamoni Bapoohee *v.* Digumbar Mitter, B. L. R., II, xv., *Short Notes.*)

Service or notification of order.

522. The order mentioned in section five hundred and twenty-one shall, if practicable, be served personally on the person to whom it is issued.

But if personal service is found to be impracticable, such order shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

Not serving this summons personally, will not be a ground for setting aside proceeding under this chapter.

Person ordered shall obey or may claim a Jury.

523. The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same, or to appear before the Magistrate before whom he was required by the order to appear and show cause as aforesaid; or he

may apply (*a*) to such Magistrate for an order for a Jury to be appointed to try whether such order is reasonable and proper.

(*a*). The petition for an order for the appointment of a Jury should be written on a Stamp Paper of eight annas, see Act VII of 1870.

Constitution of Jury.

On receiving such application, such Magistrate shall forthwith appoint a Jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant (*b*).

(*b*). This should be carefully attended to, if from any chance the constitution of the Jury is changed, and a fresh Juror appointed. (Shama Kant Bundopadhya, S. W. R., XIV, 1869.)

A Jury appointed under s. 310 is not properly constituted when only the foreman is appointed by the Magistrate, and the rest of the members by the parties. (Hurgobind Pal, B. L. R., VII, 57.)

Suspension of order.

The execution of the order shall be suspended pending such inquiry, and the Magistrate who issued the order, or before whom the applicant appears, shall be guided by the decision of the Jury, which shall be according to the opinion of the majority.

When order may be made absolute.

If the applicant, by neglect or otherwise, prevents, or if he does not claim, the appointment of a Jury, or if from any cause the Jury so appointed do not decide and report within a reasonable time, the Magistrate may pass such order as he thinks proper, which order shall be carried out in the manner hereinafter provided.

Report of Jury and order thereon.

The time within which the report is to be made shall be fixed by the Magistrate in the order for the appointment of the Jury, and may from time to time be extended by him. When the Jury have made their report, the order of the Magistrate must be founded thereon, except in cases falling under section five hundred and twenty-eight.

Attendance of Jury.

524. Such Magistrate may summon so many Jurors as may be necessary, and such person shall be bound to attend and make their inquiry and report.

Any Juror failing to attend or neglecting his duty as a Juror shall be liable to be dealt with under section one hundred and seventy-four of the Indian Penal Code.

S. 174, P. C., refers to "not obeying a legal order to attend at a certain place."

Procedure in case of disobedience or neglect by person ordered.

525. If the person, to whom the order, mentioned in section five hundred and twenty-one, is issued, appears to show cause against the same, as hereinafter provided, the Magistrate shall take evidence in the matter, but if he does not appear or does not obey the order,

or apply for a Jury within the time specified in such order,

he shall be liable to the penalty prescribed in that behalf in section one hundred and eighty-eight (*a*) of the Indian Penal Code;

(*a*). Simple imprisonment for one month, or fine up to Rs. 200, or both.

and the Magistrate, who issued such order, may proceed to carry it into execution at the expense of such person, and may realize such expenses, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of such moveable property of such person within or without his jurisdiction. If such property is without his jurisdiction, the order shall authorize its attachment and sale when endorsed by the Magistrate in whose jurisdiction the goods are attached.

No suit shall lie in respect of anything necessarily or reasonably done in carrying out the provisions of this section.

Procedure where Jury finds Magistrate's order to be reasonable.

526. If, in a case referred to a Jury, the Jury find that the order of the Magistrate is reasonable and proper, as originally made, or subject to a modification which the Magistrate accepts, the Magistrate, who issued the order, or before whom cause was shown, shall give notice of such finding to the person to whom the order was issued, and shall add to such notice an order to obey the aforesaid order, within a time to be fixed in the notice, and an intimation that, in case of disobedience, such person will be liable to the penalty provided by section one hundred and eighty-eight of the Indian Penal Code.

If such latter order is not obeyed, the Magistrate may proceed as in section five hundred and twenty-five.

A Magistrate cannot receive and enforce the award of a Jury under s. 310 of the Criminal Procedure Code, delivered long after the day fixed for the purpose. (*Hurgobind Pal*, B. L. R. VII, 57.)

There is no right of appeal from the decision of a jury appointed to try whether the order of a Magistrate for the removal of a nuisance was reasonable and proper. Such decision of the jury is not a judicial proceeding with which the High Court can interfere. (*Ramanund*, S. W. R., XVI, 66.)

Procedure where person ordered satisfies Magistrate that order is not reasonable.

527. If the person, to whom the order of the Magistrate, under section four hundred and twenty-one, is issued, appears and shows cause against it so as to satisfy the Magistrate who issued it that it is not reasonable and proper, no further proceedings shall be taken in the case.

Injunction pending inquiry by Jury.

528. If the Magistrate who issued the order considers that immediate measures are necessary to be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person, to whom the order under section five hundred and twenty-one was issued, as is required to obviate or prevent such danger or injury, whether a Jury is to be, or has been, appointed or not.

In default of such person forthwith taking all necessary measures ordered to be taken by such injunction, the Magistrate may himself use or cause to be used such means as may be necessary to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything necessarily or reasonably done for that purpose.

Saving of certain statutory provisions.

529. Nothing in this chapter shall interfere with the provisions of section forty-eight of Act No. XXIV of 1859 (*for the better regulation of the Police within the territories subject to the Presidency of Fort St. George*), or of section thirty-four of Act No. V of 1861 (*for the regulation of Police*), or of section sixteen of Act No. VIII of 1867 (*for the regulation of the District Police in the Presidency of Bombay*), of the Governor of Bombay in Council.

Notes by Select Committee on Chap. XL.

We have given power to Criminal Courts convicting any person of an offence attended with criminal force, by which any person was dispossessed of immoveable property, to restore the dispossessed person to possession without prejudice to the decision of a Civil Court.

CHAPTER XL.—ss. 530—535.

POSSESSION.

Magistrate how to proceed if any dispute concerning land, &c., is likely to cause breach of the peace.

* S. 85.

530. Whenever the Magistrate of the District,* or a Magistrate of a Division of a District or Magistrate of the first class, is satisfied that a dispute, likely to induce a breach of the peace, exists concerning any land or the boundaries of any land, or concerning any houses, water, fisheries, crops or other produce of land, within the limits of his jurisdiction,

such Magistrate shall record a proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to attend

his Court in person, or by agent, within a time to be fixed by such Magistrate, and to give in a written statement of their respective claims, as respects the fact of actual possession of the subject of dispute.

Party in Possession to be continued until ousted by due course of law.

Such Magistrate shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire and decide which party is in possession of the subject of dispute.

After satisfying himself upon that point, he shall issue an order declaring the party or parties to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time.

EXPLANATION.—Such Magistrate may satisfy himself of the existence of a dispute likely to induce a breach of the peace from a report or other information; but the question of possession must be decided on evidence taken before him.

Under this section the question of title is excluded, and the Magistrate is equally prohibited from grounding a *primâ facie* case of possession on the title shown in evidence by either party. He should confine himself to ascertain what was the subject of the dispute and the question of the possession. (R. v. Omirto Nauth Jha and others, Ind. Jur., I, N. S., 399; W. R., VI, Cr., 61.)

Where an order was made between A on the one side, and B and the three tenants of B on the other, declaring that A was in possession of the property in dispute,—*held* that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question. (In the matter of Gopal Burnawar, B. L. R., III, A. Cr, 13.)

Magistrates should clearly understand that the object of this section is to prevent a breach of the peace not to set right a wrong. Having satisfied himself that, if he does not act, a breach of the peace *is* likely to ensue, a Magistrate has only to look to the person who is actually in possession (not who has been and is wrongfully dispossessed), and to keep him there until ousted by due process of law. (Ghutam Mohammed, Agra, I, 83; Ramjeebun Dobay, S. R., 1864, 5; Mussamut Imam Bandee, W. R., VII, 26; Bhadreswari Chowdhrani, B. L. R., VII, 329.)

When persons are called upon to prove possession, the subject of dispute should be very carefully defined by the Magistrate. A certificate given under Act XXVII of 1860 to collect debts due to a deceased person is not in itself conclusive proof of possession. (Geerjamonee, S. R., 1864, 2.)

CH. XL. s. 530.

This section gives Magistrates no power to interfere with the decrees of the Civil Court. (Shama Soonderee Debya, W. R., VI, 10.)

In addition to an inquiry under this chapter, proceedings may also be taken under s. 419. (Keshub Chunder Sandyal, W. R., VI, 4.)

If the parties neglect to file their written statements on the day appointed, a Magistrate cannot dismiss the case. (Goluck Chunder Mytee, W. R., XI, 9.)

In Setanath Roy (W. R., III, 9), where no proceeding was recorded, and no notice had been served on the parties, the Magistrate having, on conclusion of a case of unlawful assembly, summarily ordered one party to be kept in possession, the Court set aside the order as illegal.

In proceedings under Chapter XL, a Magistrate should not hold a lengthened and protracted investigation, but should make a speedy and summary inquiry into the fact of possession, and pass, with as little delay as possible, an order declaring the party whom he finds in possession entitled to retain it, until ousted by due course of law. (Bullubkant Bhuttacharjee, W. R., II, 36.)

There is a clear reason for requiring a distinct *adjudication* as to the existence of a dispute likely to occasion a breach of the peace, before a Magistrate proceeds further. By adjudication is meant a finding on legal evidence. The finding of the Magistrate in this case is only on a Police report which *per se* is no legal evidence in the case. Legal evidence must be something upon oath, or something to which the Magistrate himself deposes as having seen with his own eyes; but what he has acted upon in this case is no such legal evidence, and therefore no judicial adjudication can be said to have been come to in this case.

It is pressed upon us that there are many other cases on the file showing that there were disputes with regard to this land, but those *other* cases can be no evidence of an intended breach of the peace on *this* special occasion; nor was any document connected with any of these cases referred to by the Magistrate as the ground of this action. Each case must be decided upon legal evidence bearing upon its own facts, and with reference to its own surrounding circumstances. (Obhoy Chowdry, S. W. R., XV, 43; also Tarinee Kant Lahoree, *Ibid.*)

Where an order had been made by a Magistrate in favor of A in respect of certain land, and B subsequently obtained an order from the Collector declaring him entitled to the same land, in pursuance of which he was put into possession by an officer of the Collector, it was held, that before B could be convicted of disobeying an order made by a public officer, it should be proved that B was aware of the order, and that having that knowledge he disobeyed it. (Abelak Lall, XV, 50.)

A Magistrate is not competent to interfere with the execution of a decree of the Civil Court. When a Civil Court decree has been passed regarding the whole or any portion of disputed land, it is the Magistrate's duty to maintain that decree, and he cannot institute proceedings regarding the land covered by it. (Rai Mohun Roy, XVI, 24.)

When both the disputing parties are examined, and state that men were collected by their opponents for the purpose of committing a breach of the peace, a Magistrate is justified, without inquiring who was the aggressor or the aggrieved party, to take whatever steps are, in his opinion, necessary to prevent a breach of the peace. (Gunga Narain Mitter, XV, 85).

Where a Magistrate decides on the evidence in favor of a party as being in possession of the disputed land, the High Court cannot re-consider the Magistrate's decision, and decide which party is in actual possession. (Bharut Chunder Bose, XV, 86.)

A mere local inquiry and statements of parties not on oath are not sufficient data on which a Magistrate can decide what party is in possession of land with regard to which a breach of the peace is apprehended. (Kalee Chundro Shah, XVI, 13.)

If previous possession cannot be ascertained, Magistrate may attach subject of dispute.

531. If such Magistrate decides that neither of the parties is in possession, or is unable to satisfy himself as to which person is in possession of the subject of dispute, he may attach it, until a competent Civil Court shall have determined the rights of the parties or who ought to be in possession.

Collectors have been forbidden by the Board of Revenue, Bengal, to take up management thus attached. On a reference made to it on the subject, the Calcutta High Court has stated that there were no grounds for doubting the correctness of these orders. (W. R., V, C. L., 3.)

It is only when neither party has succeeded in proving his possession, or when the case is one of doubtful possession, that the Magistrate is authorized to proceed under this section. (Khajah Enactoollah Chowdry, W. R., VIII, Civ., 366.)

A Sessions Judge is not authorized under this Code to interfere with the order of a Magistrate under this section. (Huronath Chowdhry, S. W. R., XV, 1.)

The power of attaching land regarding which there is a dispute conferred on a Magistrate by this section extends to disputes as to land of which rival zemindars are in possession by their ryots. (J. W. Masseyk, S. W. R, XV, 1.)

Disputes concerning right of use of land or water.

532. If a dispute arise concerning the right of use of any land or water, or any right of way, such Magistrate, within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it appears to him that the subject of dispute is open to the use of the public, or of any person or of any class of persons, such Magistrate may order that possession thereof shall not be taken or retained by any one to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the person claiming such possession shall obtain the decision of a competent Civil Court adjudging him to be entitled to such exclusive possession:

Provided that such Magistrate shall not pass any such order, if the matter be such that the right of

use is capable of being exercised at all times of the year, unless such right has been ordinarily exercised within three months from the date of the institution of the inquiry, or, in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

In a case of dispute concerning a right of way, instead of deciding against the complainant on the ground that he already had another way of approach, the question whether or no the road in dispute was open to the use of the complainant should be tried, and if it be held so, to retain him in possession and refer objector to the Civil Courts. (Toyluckonauth Sircar, W. R., II, C. L., 64.)

When a person complains that a path in dispute which was open to his use, and had recently been enjoyed by him, was now closed against him by defendants, the Magistrate is bound to inquire into the point; and if he finds the complaint true to order, that possession thereof should not be taken to the exclusion of the complainant. To refer the complainant in such a case to the Civil Court is irregular. (Bhoiro Mundul, S. W. R., XIV, 29, also II, 64.)

Where the dispute was as to the right of the use of water which a second party has embanked.

The Deputy Magistrate's remark that he could not give redress under the sections of this chapter, because the embankment had already been constructed is incorrect. If he was of opinion that the first party had a right to the use of the water of this water-course, he could (provided the complaint had been brought in proper time) have ordered that exclusive possession of it should not be taken by the second party, and ordered the removal of the embankment by which such exclusive possession was retained. (Madho Charan, W. R., XIII, 51.)

Local inquiry to determine boundary dispute.

533. Whenever a local inquiry is necessary for the purposes of this chapter, any Magistrate of the first class may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such instructions, consistent with the law for the time being in force, as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Power to restore possession of immoveable property.

534. Whenever, in any Criminal Court, a person is convicted of an offence attended with Criminal force, and it appears to such Court that, by such Criminal force, any person has been dispos-

sessed of any immoveable property, the Court may order such person to be restored to possession.

No such order shall prejudice any right over such immoveable property which any person may be able to show in a Civil suit.

Saving of powers of Collectors and Revenue Courts.

535. Nothing in this chapter shall affect the powers of a Collector, or a person exercising the powers of a Collector, or of a Revenue Court.

Notes by Select Committee on Chap. XLI.

We have provided that an order of maintenance may be enforced as a warrant for the levy of a fine in any district in which the person to whom the order is addressed may happen to be.

CHAPTER XLI.—ss. 536—538.

Of the Maintenance of Wives and Families.

Order for maintenance of wives and children.

536. If any person, having sufficient means, neglects or refuses to maintain his wife, or legitimate or illegitimate child unable to maintain himself, the Magistrate of the District, or a Magistrate of a Division of a District, or a Magistrate of the first class, may, upon due proof thereof by evidence, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as to such Magistrate seems reasonable.

Such allowance shall be payable from the date of the order.

Enforcement of order.

If such person wilfully neglects to comply with this order, such Magistrate may, for every breach of the order, by warrant, direct the amount due to be levied in the manner provided for levying fines; and may order such person to be imprisoned, with or without hard labor, for any term not exceeding

one month, for each month's allowance remaining unpaid:

Provided that, if such person offers to maintain his wife on condition of her living with him, and his wife refuses to live with him, such Magistrate may consider any grounds of refusal stated by such wife; and may make the order allowed by this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Proviso.

No wife shall be entitled to receive an allowance from her husband under this section, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by consent.

A Magistrate is nowhere empowered under this section to issue an order for alimony to unmarried women in a state of pregnancy, nor to any illegitimate child prospectively from the day of its birth. (Tikha Moodai, W. R., VIII, 67.)

The Civil Court has no power to set aside alimony orders issued by a Magistrate, nor is a wife, because she has under this section received support, debarred from bringing a civil action for maintenance. (Mussamut Lutchminea, S. D. A, Agra, 1862, 158; Lala Gopeenath, W. R., VI, Civ., 57.)

The relatives of an imprisoned husband have no power to interfere with, nor are they bound to support, his wife. (Jud. Comr., Punjab, 1862—64, 87.)

A Mahomedan wife by a nikah marriage is entitled to maintenance under this section, but it does not apply to the so-called marriages among Sheeahs which are temporary, and are really only concubinage, maintenance cannot be ordered for an unborn child. (Bunsee Ditchit, N. W. P., 17th March 1871.)

Maintenance cannot be given for children which a husband is willing to support, provided they live under his own roof. (Panchuda, &c., B. L. R., VIII, App., 11.)

Where a Criminal Court ordered a husband to pay a sum of money monthly towards the maintenance of his wife and children, and a Civil Court subsequently, on the suit of the husband for restitution of conjugal rights, gave the husband a decree, it was held that the order of the Criminal Court ceased to have any effect from the date of the decree of the Civil Court. (Tikha Moodai, 2nd April 1870; High Court, S. W. R., XIII, 52.)

Though Chapter XLI of the Code does not provide for the recording of evidence, yet "due proof" must mean "legal proof,"—*i. e.*, proof on "oath;" and before a party is bound down, the charge must be legally proved against him. (Pyari Dass Gosain, W. R., XIII, 19.)

Alteration in allowance.

537. On the application of any person receiving or ordered to pay a monthly allowance under the provisions of section five hundred and thirty-six, and on proof of a change in the circumstances of such person, his wife, or child, the Magistrate may make such alteration in the allowance ordered as he deems fit, provided the total sum of rupees fifty a month be not exceeded.

Enforcement of order.

538. A copy of the order of maintenance shall be given to the person for whose maintenance it is made, or to the guardian of such person; and shall be enforceable by any Magistrate in any place where the person to whom the order is addressed may be, on the Magistrate being satisfied as to the identity of the parties and the non-payment of the sum claimed.

PART XII.

MISCELLANEOUS PROVISIONS.

CHAPTER XLII.—ss. 539—541.

MISCELLANEOUS.

Procedure in miscellaneous criminal cases and proceedings.

539. The procedure prescribed by this Act shall be followed, so far as it can be, in all miscellaneous criminal cases and proceedings which are instituted in any Court.

Saving of jurisdiction of Presidency Police Magistrates.

540. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Magistrates or Commissioners of Police in the Presidency Towns, except so far as this Act expressly provides for the same.

Saving of jurisdiction and procedure of Landholders, Heads of Villages, Village Police Officers, Cantonment Magistrates.

541. Nothing in this Act shall be held to alter or affect—

(*a*) the jurisdiction, or procedure of landholders specially empowered according to law in the Presidency of Bombay,

(*b*) the jurisdiction or procedure of the heads of villages in the Presidency of Fort Saint George,

(*c*) the jurisdiction, or procedure of Village Police Officers in the Presidency of Bombay,

(*d*) the jurisdiction or procedure of any officer duly authorized and appointed under the laws in force in the Presidencies of Fort Saint George and Bombay respectively, for the trial of petty offences in military bazars at cantonments and stations occupied by the troops of those Presidencies respectively.

SCHEDULE I.

ENACTMENTS REPEALED.

Year and Chapter or Number.	Title.	Extent of Repeal.	
53 Geo. iii, cap. clv.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges, &c.	Section 105.	Statute.

Number and Year.	Subject or Title.	Extent of Repeal.	
V of 1841	An Act for the greater uniformity of the process upon trials for State offences, &c.	The whole.	Acts.
XV of 1843	An Act for the more extensive employment of Uncovenanted Agency in the Judicial Department.	Sections 3, 4, 5, 6.	
XV of 1845	An Act for declaring and enacting the privileges of Native Officers and Soldiers, &c.	So much as has not been repealed.	
XXIX of 1845	An Act to empower the Government of Bombay to appoint Joint Zillah Judges, &c.	Ditto.	

SCHEDULE I.—*(Continued).*

Acts.

Number and Year.	Subject or Title.	Extent of Repeal.
VII of 1853	An Act to extend the jurisdiction of Magistrates, under the 53rd Geo. iii, Cap. 155, Section 105, &c.	The whole Act.
X of 1854	An Act for regulating the powers of Assistants to Magistrates, &c.	So much as has not been repealed.
XX of 1856	An Act to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, &c.	Section 58.
XXV of 1861	An Act for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	So much as has not been repealed.
XVII of 1862	An Act to repeal certain Regulations and Acts relating to Criminal Law and Procedure.	Ditto.
VI of 1864	An Act to authorize the punishment of whipping in certain cases.	Sections 8, 11, 12.
XXVIII of 1867	An Act to remove doubts as to the legality of certain sentences passed by tribunals called Petty Sessions Courts, in the North-Western Provinces.	The whole Act.
XXXVI of 1867	An Act to correct an error in Act No. XVII of 1862.	Ditto.

SCHEDULE I.—*(Continued).*

Number and Year.	Subject or Title.	Extent of Repeal.	
VIII of 1869	An Act further to amend the Code of Criminal Procedure.	The whole Act.	Acts.
XXVII of 1870	To amend the Indian Penal Code.	Sections 16, 17, and the two schedules.	
XIX of 1871	An Act to provide for the appointment of Sessions Judges in Bengal and the North-Western Provinces.	Sections 1, 2, 3, 4, 5 and 6.	
Bombay Act VII of 1867.	An Act for the Regulation of the District Police in the Presidency of Bombay.	Section 40.	
IX of 1793	A Regulation for re-enacting, with Alterations and Modifications, the Regulations passed by the Governor-General in Council on the 3rd December 1790, &c.	Sections 3 and 34.	Regulations.
IX of 1804	A Regulation for altering the denomination of the Court of Circuit, &c.	So much as has not been repealed.	
VI of 1810	A Regulation for defining the penalties to which Zámindárs, &c.	Ditto.	
XVI of 1810	A Regulation to amend the existing Rules for the Appointment of Zillah and City Magistrates, &c.	Ditto.	

SCHEDULE I.—*(Continued).*

Regulations.

Number and Year.	Subject of Title.	Extent of Repeal.
I of 1811	A Regulation for making more adequate Provision for the punishment of persons found guilty of the offence of Breaking into Houses, &c.	So much as has not been repealed.
III of 1812	A Regulation for amending some of the Rules at present in force in regard to the conduct of inquiries into charges of a criminal nature, &c.	So much of section four as has not been repealed.
VIII of 1814	A Regulation for extending the Provision contained in Clause Second, Section IV, Regulation III, 1812, to cases of Murder, Arson and Theft.	So much as has not been repealed.
XX of 1817	A Regulation for reducing into one Regulation, with Amendments and Modifications, the several Rules which have been passed for the Guidance of Darogahs, &c.	Section thirty-three, clauses one and two.

There are also repealed by this Act—

Madras Regulations IX of 1816 (Ss. 3, 4 and 5) and so much as has not been already repealed of Regulations II of 1827 and VIII of 1827.

Bombay Regulations XII of 1827 (S. 10, cl. 4, so much of S. 13 as has not been repealed, and S. 37, cl. 3); XIII of 1827 (Ss. 1, 2, 3, 7, 8, 9, 14, and 15); III of 1830 (Ss. 2 and 6); IV of 1830 (S. 2); and VIII of 1831 (the whole).

SCHEDULE II.

FORMS OF SUMMONS, WARRANTS, BONDS AND RECOGNIZANCES.

A.

FORM OF SUMMONS (*section* 152).

To *A. B.*, of

Whereas your attendance is necessary to answer to a complaint of (*state shortly the offence complained of*): You are hereby required to appear in person or by authorized agent, (*as the case may be*), before the [Magistrate] of on the day of Herein fail not.

(*Signature and Seal.*)

Dated the day of

B.

FORM OF WARRANT (*section* 159).

To (*name and designation of the person or persons who are to execute the warrant*).

Whereas of is accused of the offence of (*state the offence*): You are hereby directed to apprehend the said and produce him before me. Herein fail not.

(*Signature and Seal.*)

This warrant may be endorsed as follows:—

If the said shall give bail, himself in the sum of , with one surety in the sum of

(*or* two sureties, each in the sum of), to appear before me on the day of , he may be released.

(*Signature.*)

Dated

C.

FORM OF WARRANT OF COMMITMENT FOR INTERMEDIATE CUSTODY (*sections* 196, 197 *and* 303).

To Jailor of

Whereas , of , is charged with (*state the offence in respect of which the prisoner is charged*), and has been committed to take his trial before the Court of at

You are hereby required to receive the said into your custody and to produce him before the said Court when so required.

(*Signature.*)
(*Office and powers.*)

Dated

D.

FORM OF WARRANT OF COMMITMENT (*section* 303).

To Jailor of

Whereas of was convicted before me (*name and official designation*) of the offence of (*mention the offence quoting Act and section*), and was sentenced to (*state the punishment fully and distinctly, mentioning its nature and extent*): You are hereby required to receive the said into your custody in the said jail of , together with this warrant, and there carry the aforesaid sentence into execution according to law.

(*Signature.*)

Dated the day of

E.

FORM OF BOND TO KEEP THE PEACE (*section* 493).

Whereas I, , inhabitant of , have been called upon to enter into a bond to keep the peace for the term of ; I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above-said that he shall not commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

F.

FORM OF RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE (*sections* 130 and 360).

I, , of , do hereby bind myself to appear at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or as the case may be*, to prosecute and give evidence, *or* to give evidence) in the matter of a charge of against one *A. B.*, and to attend at the said Court from day to

day, or as I may be otherwise directed by the presiding officer; and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

G.

FORM OF BOND FOR GOOD BEHAVIOUR (*section* 509).

Whereas I, , inhabitant of , have been called to enter into a bond to be of good behaviour to Her Majesty the Queen and to all her subjects, for the term of , I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above-said that he shall be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of Rupees.

(*Signature.*)

Dated

SCHEDULE III.

CHARGES.

(I.)—CHARGES WITH ONE HEAD.

(*a.*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

On Penal Code, section 121.

(*b.*) That you, on or about the day of , at , waged war against the Queen, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session.

(*c.*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

[*To be substituted for* (*b*).]

On section 124.

(2.) That you, on or about the day of at , with the intention of inducing the Honourable *A. B.*, Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 161.

(3.) That you, being a public servant in the Department, directly accepted from [*state the name*] for another party [*state the*

name] a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 304.

(4.) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 306.

(5.) That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 325.

(6.) That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 392.

(7.) That you, on or about the day of , at , committed robbery, an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 395.

(8.) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session.

In cases of abetment, the particular means of abetment and the proper section should be clearly given. (W. R., C. L., *passim*.)

(9.) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] such conduct being contrary to the provisions of Act Section and was known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 166.

(10.) That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " " which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 193.

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session." *In* (*d*) *omit* "by the said Court."]

(II.)—Charges with two or more heads.

(*a.*) I, [*name and office of Magistrate, &c.,*] hereby charge you [*name of accused person*] as follows:—

(*b.*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Penal Code, sections 241 and 242.

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 242 of the Indian Penal Code, and within the cognizance of the Court of Session.

(*c.*) and I hereby direct that you be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

On sections 302 and 304.

For (*b*). *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

On sections 379 and 382.

For (*b*). *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Fourthly.—That you, on or about the day of at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Alternative charges on section 193.

For (*b*). That you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that " " and that you, on or about the day of , at , in the course of the trial of before , stated in evidence that " " one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session.

In trials before Magistrates, substitute "within my cognizance" *for* "within the cognizance of the Court of Session;" *and omit* "by the said Court."

The evidence, when possible, to show which statement is false, should be sent up to the Sessions Court, and it should always be the object of the Magistrate in inquiries of this nature to prove the absolute truth or falsehood of either charge (Cal. H. C., C. O. 10A, 1863; II W. R., C. L., 24; IV, *Ibid*, 1.)

Where an accused person contradicted on oath a previous deposition in three different points, the charge, instead of containing six heads of charge, the two

contradictory statements in each point being charged as separate instances of giving false evidence, should only contain three heads of charge; the two statements in each head ought to be set out in an accurate form,—*e. g.:* "That *A B* intentionally gave false evidence in a stage of a judicial proceeding:—1*st*, Either in that *A B* before —— knowingly and falsely stated ——; or, that *A B* before the —— knowingly," &c. The second and third heads should also be in the same form. (VIII W. R., C. L., 6.) The particular statement on which the charge of giving false evidence is assigned should be entered in the charge, but only so much as is relevant to the charge. (Cal. H. C., C. O., 3, 1866.)

SCHEDULE IV.

EXPLANATORY NOTES.—1*st*.—The entries in the second and sixth columns of the schedule, headed, respectively, "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

2*nd*.—The term "Whether bailable or not," in column 5, is to be taken in connection with the provisions of Sections 388 and 389 of this Code.

3*rd*.—Offences may be tried by a Court superior to the Court specifically mentioned in column 7. For example, a Court of Session may try an offence entered in column 7 as triable by a Magistrate.

4*th*.—The words "Any Magistrate," as used in column 7, shall include any Magistrate of the first, second, or third class.

5*th*.—In the territories in British India to which the General Regulations of Bengal, Madras, and Bombay do not extend, the powers given by this Act shall be exercised by such officers as the Local Government of those territories respectively shall appoint.

6*th*.—The last part of the schedule, headed "Offences against other Laws," shall not be taken to alter or affect any special provision contained in such laws regarding the procedure to be followed in the case of offences made punishable thereby.

7*th*.—The direction in column 4 is meant to indicate to Magistrates the manner in which the discretion vested in them by Sections 148, 149, and 150 is commonly to be used, but it is not to affect the definition of summons cases and warrant cases given in Section 4.

CHAPTER V.—OF ABETMENT.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence,* if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence,* if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
111	When one act is abetted and a different act is done, subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.

* See Note *, S. 187.

PENAL CODE.

CHAPTER V.—OF ABETMENT.

107. A person abets the doing of a thing, who—

First.—Instigates (*a*) any person to do that thing;

(*a*). The offence of abetment depends mainly on the guilty knowledge or intent of the abettor, and it is according to this that he is punished; he is not responsible if the act done is totally and entirely distinct from the offence.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing (*b*).

(*b*). A person can only be convicted of abetment of theft under the 1st Explanation of Section 107 of the Indian Penal Code, if he has procured, or attempted to procure, the commission of the theft. Mere subsequent knowledge of the offence is insufficient. *Shumeeruddeen.* W. R., II., 40.

Illustration.

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing;

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 2.—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Where, of several persons constituting an unlawful assembly, some only are armed with sticks, and A. one of them, is not so armed, but picks up a stick and uses it; B (the master of A), who gives a general order to beat, is guilty of abetting the assault made by A. *Rosoo Koollah*, W. R., XII., 51.

The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. *Held*, that this was abetment of giving false evidence in a stage of a judicial proceeding, and triable before a Court of Session only. *Audy Chetty*, Mad. Rep., A. C., II., 438.

108. A person abets (*c*) an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

(*c*). There can be no conviction for abetment of murder without proof of murder. *Askur*, W. R., 1864, Cr., 12.

The conviction of a police inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge *mala fide*. *Muthoorapershad Panday*, W. R., II, 10.

The intention of the prisoner being the gist of the offence, and it being probable that he (a stranger in the village) had been himself deceived, he was acquitted of abetment of the issue of a false certificate of summons. *Hissamuddeen*, W. R., III., 37.

Knowing of a design to commit a dacoity, and voluntarily concealing the existence of that design, with the knowledge that such concealment would facilitate the commission of the dacoity, does not amount to an abetment of the dacoity. *Jhugroo*, W. R., IV., 2.

The mere issue of a hookumnamah (to collect statistical information) by a police officer, is no legal ground for a conviction of abetment of cheating or of extortion. *Obhoy Churn Dass*, W. R., IV., 5.

Persons punished as principals cannot also be punished for abetment of the same offence. W. R., IV, 23; *Ramnarain Josh*, W. R., IV., 37.

Prisoner was present at a murder without being aware that such an act was to be committed. Through fear, he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held*, that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under Section 201 of the Penal Code. *Goburdhun Bera*, W. R., VI., 80.

Under Section 94, Act XX of 1866, an abettor may be punished more severely than his principal can be. *Gopalprosad Sein*, W. R., VIII., 16.

Where a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI of 1867, filed stamp paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect, which was ante-dated, it was held that he was guilty of having abetted the commission of forgery of a document within Section 463, and Clause 1, Section 464 of the Penal Code. *Sookmoy Ghosh*, W. R., X, 23.

A prisoner who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within Clause 2, Section 107, Penal Code, and ought not to have been convicted of the theft, but the abetment thereof under Clause 3, Section 107, and Section 109, Penal Code, read together. *Boodhun Mooshur*, W. R., VIII., 78.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a*). A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*). A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*). A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here, A, whether the act be committed or not, is guilty of abetting an offence.

(*b*). A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence and had committed murder, and he is therefore subject to the punishment of death.

(*c*). A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d*). A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the

property out of Z's possession in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly and therefore does not commit theft. But A is guilty of abetting theft and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder, and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it; it is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

109. Whoever abets any offence* shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished as by schedule on page 434.

* See Note *, S. 187.

Explanation.—An act or offence* is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a*). A offers a bribe to B, a public servant, as a reward for showing A some favor in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in Section 161.

(*b*). A instigates B to give false evidence; B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence and is liable to the same punishment as B.

(*c*). A and B conspire to poison Z. A, in pursuance of the conspiracy, procures poison and delivers it to B in order that the may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here, B is guilty of murder; A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Whoever abets (*d*) the commission of an offence* shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence* which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

(*d*) Where A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence,—*Held*, that A was guilty at least of abetting the commission of voluntarily causing grievous hurt. *Doorgessur Surmah*, W. R., VII., 97.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abet-

* See Note *, S. 187.

CHAPTER V.—OF ABETMENT.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
113	When an effect is caused by the act abetted different from that intended by the abettor.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence committed.	By the Court by which the offence abetted is triable.
114	If abettor is present when offence* is committed (*a*).	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
115	Abetment of an offence* punishable with death or transportation for life, if the offence* be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for seven years, and fine.	Ditto.

(*a*). In order to bring a prisoner within S. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that "if absent" he would have been "liable to be punished as an abettor;" and then to show that he was also present when the offence was committed. *Mussamut Nirmi*, W. R, VII., 49.

* See Note *, S. 187.

ment, and was committed under the influence of the instigation, or with the aid, or in pursuance of, the conspiracy which constituted the abetment.

Illustrations.

(*a*). A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake, puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was, under the circumstances, a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b*). A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act and not a probable consequence of the burning.

(*c*). A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence,* the abettor is liable to punishment for each of the offences.*

Illustration.

A instigates B to resist by force a distress made by public servant. B in consequence resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the Officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence* for which he would be punishable in consequence of his abetment is committed, he shall be deemed to have committed such act or offence.*

115. Whoever abets the commission of an offence* punishable with death or transportation for life, shall, if that offence* be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished as by schedule on opposite page; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be punished as by schedule on opposite page.

* See Note *, S. 187.

* See Note *, S. 187.

CHAPTER V.—OF ABETMENT.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If an act which causes harm be done in consequence of the abetment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	Not bailable.	Imprisonment of either description for fourteen years, and fine.	By the Court by which the offence abetted is triable.
116	Abetment of an offence* punishable with imprisonment, if the offence* be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to one-quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

* See Note *, S. 187.

	If the abettor or the person abetted be a public servant, whose duty is to prevent the offence.*	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence* by the public, or by more than ten persons.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to one-half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

* See Note *, S. 187.

CHAPTER V.—OF ABETMENT.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence be punishable with death or transportation.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	Not bailable.	Imprisonment of either description for ten years.	By the Court by which the offence abetted is triable.
	If the offence be not committed.	Ditto ...	Ditto ...	According as the offence abetted is baliable or not.	Imprisonment extending to one-quarter of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-quarter of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Whoever abets an offence* punishable with imprisonment, shall, if that offence* be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished as by schedule on page 440;

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence,* the abettor shall be punished as by schedule on page 441.

Illustrations.

(*a*). A offers a bribe to B, a public servant, as a reward for showing A some favor in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b*). A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this Section, and is punishable accordingly.

(*c*). A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*). B abets the commission of robbery by A, a police officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

* See Note *, S. 187.

117. Whoever abets the commission of an offence* by the public generally, or by any number or class of persons exceeding ten, shall be punished as by schedule on page 441.

Illustration.

A affixes in a public place a placard, instigating a section consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished as by schedule on page 441;

or, if the offence be not committed, as by schedule on page 441.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this Section.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such

* See Note *, S. 187.

CHAPTER V.—OF ABETMENT.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If not committed ...	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	Imprisonment extending to one-eighth part of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence abetted is triable.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging, or attempting to wage, war, or abetting the waging of war, against the Queen.*	Shall not arrest without warrant.	Warrant ...	Not bailable.	Death, or transportation for life, and forfeiture of property.	Court of Session.

* Engaging in a conspiracy to wage war, and abetting the same against the Queen. under S. 121, Indian Penal Code, are offences under the Penal Code only, and are not treason or misprision of treason; and therefore the provisions of the Statute 7, Will. III, C. 3, S. 5, are not applicable. *Amirooddeen*, B. L. R., VII., 63.

offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished as by schedule on opposite page 441;

or if the offence be not committed, as by schedule on page 442.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence: Here, A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this Section.

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished as by schedule on page 442.

CHAPTER VI.

OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished as by schedule on opposite page.

Illustrations.

(*a*). A joins an insurrection against the Queen. A has committed the offence defined in this Section.

(*b*). A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

121A. Whoever, within or without British India, conspires to commit any of the offences punishable by Section one hundred and twenty one, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished as by schedule on page 446.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

122. Whoever collects men, arms or ammunition, or otherwise prepares to wage war with the intention of either waging, or being prepared to wage war against the Queen, shall be punished as by schedule on page 446.

123. Whoever, by any act or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished as by schedule on page 446.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise, or refrain from exercising, in any manner, any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or a Member of the Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes by means of criminal force, or the show of criminal force, or attempts so to overawe such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished as by schedule on page 446.

124A. Whoever, by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise,

CHAPTER VI.—OFFENCES AGAINST THE STATE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
121A	Conspiring to commit certain offences against the State.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Transportation for life or any shorter term, or imprisonment of either description for ten years.	Court of Session.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

124A	Exciting, or attempting to excite, disaffection.	Ditto.	Ditto.	Ditto.	Transportation for life, or for any terms and fine, or imprisonment of either description for three years and fine, or fine.	Ditto.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war (*a*).	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for seven years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any power in alliance or at peace with the Queen.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation, mentioned in Sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years and fine, and forfeiture of certain property.	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto

(*a*). The punishment for a prisoner, convicted of waging war with an Asiatic Power in alliance with the Queen, must, under the Penal Code, be either transportation for life, or imprisonment of either description which may extend to seven years. Where such a prisoner was sentenced to ten years' transportation, the sentence was held to be illegal. *Queen* v. *Keifa Singh*, W. R., 16.

CHAPTER VI.—OFFENCES AGAINST THE STATE.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for three years, and fine.	Court of Session or Magistrate of first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life or imprisonment of either description for ten years, and fine.	Court of Session.

excites, or attempts to excite, feelings of dissatisfaction to the Government established by law in British India, shall be punished as by schedule on page 447.

"*Explanation.*—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection; therefore the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause."

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished as by schedule on page 447.

126. Whoever commits depredation, or makes preparation to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished as by schedule on page 447.

127. Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in Sections 125 and 126, shall be punished as by schedule on page 447.

128. Whoever, being a public servant and having the custody of any State Prisoner or Prisoner of War, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished as by schedule on page 447.

129. Whoever, being a public servant and having the custody of any State Prisoner or Prisoner of War, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished as by schedule on opposite page.

130. Whoever knowingly aids or assists any State Prisoner or Prisoner of War in escaping from lawful custody, or rescues, or attempts to rescue, any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers, or attempts to offer, any resistance to the re-capture of such prisoner, shall be punished as by schedule on opposite page.

Explanation.—A State Prisoner or Prisoner of War, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

Offences Relating to the Army and Navy.

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished as by schedule on opposite page.

"*Explanation.*—In this Section the words 'officer' and 'soldier' include any person subject to the Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869."

132. Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished as by schedule on page 450.

133. Whoever abets an assault by an officer, soldier, or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished as by schedule on page 450.

134. Whoever abets an assault by an officer, soldier, or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	May arrest without warrant.	Warrant ...	Not bailable.	Death or transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
133	Abetment of an assault by an officer, soldier, or sailor on his superior officer when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session of Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier, or sailor.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.

assault be committed in consequence of that abetment, be punished as by schedule on opposite page.

135. Whoever abets the desertion of any officer, soldier, or sailor, in the Army or Navy of the Queen, shall be punished, as by schedule on opposite page.

136. Whoever, except as hereinafter excepted, knowing, or having reason to believe, that an officer, soldier, or sailor, in the Army or Navy of the Queen, has deserted, harbours such officer, soldier, or sailor, shall be punished as by schedule on page 452.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred Rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor, in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished as by Schedule on page 452.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this Chapter.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished as by schedule on page 452.

CHAPTER VIII.

OFFENCES AGAINST PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly, is—

First,—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

Secondly,—To resist the execution of any law or of any legal process; or

Thirdly,—To commit any mischief or criminal tresspass, or other offence;* or

Fourthly,—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way or of the use of water or other incorporal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifthly,—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

* Offence to be construed as denoting anything punishable by any special or local law when the thing made punishable by it is punishable by such law with imprisonment for a term of six months or upwards, whether with or without fine.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
136	Harbouring such an officer, soldier, or sailor, who has deserted.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Fine of five hundred rupees.	Ditto.
138	Abetment of act of insubordination by an officer, soldier, or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
147	Rioting (*a*)	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting armed with a deadly weapon (*b*)	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.

(*a*). A person convicted of rioting should not be convicted of hurt or grievous hurt caused to himself. *Azgur*, W. R., V, 19.

The prisoners having been part of an assembly of more than five persons, whose common object, as apparent from their acts, was, by means of criminal force to recover possession of their cattle seized for tresspass (whether properly pounded or not), and who made use of such force and took away their cattle, were held guilty of rioting, and liable to conviction under Section 147 of the Penal Code. *Bokoo Sheikh*, W. R., 1864, 21.

A dismissal by one Court of a charge of riot against A may be a bar to A's trial by another Court on the same charge, but it does not extend to other persons not then before the Court which ordered the dismissal.

The dismissal by one Court of the charge of riot instituted by the Police is no bar to the trial by another Court of a charge of criminal tresspass instituted by a third person, although the two charges may substantially refer to the same occurrences. *Morly Sheikh*, W. R., VI., 51.

Where accused at the time of the riot are in actual peaceable possession of the land in dispute; where the acts of the opposite party in attempting to cut the crops by force are clearly illegal; where these acts are such acts as the prisoners had a right to resist, although force may be used in carrying out that resistance; that force or the injuries inflicted should first be considered as to whether they do or do not exceed the right which prisoners had in defending their property before proceeding to find a conviction. *Gooroo Charan Chang*, B. L. R., VI., App. 9.

(*b*). In a case of rioting with deadly weapons, the one side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side. *Moorut Mahton*, W. R., VIII., 3.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence (*a*).	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence.	By the Court by which the offence is triable.
150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed.	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.

(*a*). *Held* by the majority of the Court (*dissentiente* Seton-Karr, J.) that an attack made in the morning by an unlawful armed assembly, with the object of rescuing two thieves who had been captured during the night, and in which murder was committed, was a premeditated attack for which all concerned were liable to conviction for riot attended with murder. *Bhunjun Pauray*, W. R., I., 8.

143. Whoever is a member of an unlawful assembly shall be punished as by schedule on page 453.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished as by schedule on page 453.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished as by schedule on page 453.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.*

147. Whoever is guilty of rioting shall be punished as by schedule on page 453.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished as by schedule on page 453.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly know to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

150. Whoever hires, or engages, or employs, or promotes, or connives at the hiring, engagement, or employment, of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance

* Oudh Bk. Circ. XXI of 1869.—I have repeatedly pointed out to individual officers, particularly among the natives, that they do not exercise a proper degree of discrimination in dealing with these cases, and are too prone to punish both sides alike, awarding the ringleaders on each side an equally heavy punishment, and then dealing more lightly, but with no more attempt at discrimination between the relative degrees of guilt with the rank and file. It is obvious that in almost every case of riot one or other of the opposing parties must have been the aggressors; and in many instances, one of the factions is perhaps acting in strict self-defence of their property. To find out the real cause of the riot, and consequently to ascertain which side were the original wrong-doers, is often difficult and always troublesome, and yet, unless this be done, justice cannot properly be done either.

With reference to these remarks, the Chief Commissioner has desired me to see that whenever an officer awards equal punishments to both sides, he has some good and sufficient reason to give for his decision. "It should be impressed," he says, "on all Judicial Officers that when "they come to such a conclusion, they are expected to be more than "ordinarily careful in their investigation and more than ordinarily full "in their explanatory judgment."

And again in Bk. Circ. VIII of 1869.—The argument that no specific outrage was proved against rioters is untenable. The authors of the Penal Code, knowing that such technical objections might be produced in favor of rioters, have provided against them. In riots between Hindoos and Mahomedans, or between landlords and tenants, it is almost impossible to obtain reliable evidence regarding the conduct of each individual rioter.

Where the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt, from which death resulted, was caused to one of the persons. *Queen* v. *Phoolell Misser*, W. R., XII., 72.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
152	Assaulting or obstructing public servant when suppressing riot, &c.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Any Magistrate.
	If not committed ...	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of one thousand rupees.	Magistrate of the first or second class.

of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished as by schedule on page 454.

Explanation.—If the assembly is an unlawful assembly within the meaning of Section 141, the offender will be punishable under Section 145.

152. Whoever assaults, or threatens to assault, or obstructs, or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use, criminal force to such public servant, shall be punished as by schedule on opposite page.

153. Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished as by schedule on opposite page.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he, or his agent, or manager, knowing that such offence is being, or has been, committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he, or his agent, or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired engaged, or employed to join or become members of an unlawful assembly, shall be punished as by schedule on page 458.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged to do or assist in doing any of the acts specified in Section 141, shall be punished as by schedule on page 458; and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which, used as a weapon

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
155	Person for whose benefit, or on whose behalf, a riot takes place not using all lawful means to prevent it (*a*).	Shall not arrest without warrant.	Summons ...	Bailable ...	Fine	Magistrate of the first or second class.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Magistrate of the first or second class.
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Or to go armed	Ditto ...	Warrrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.

(*a*). A zemindar ought not to be made liable, under Section 155, Penal Code, for a sudden and unpremeditated riot, which there was no reason to infer he could have anticipated. *Queen* v. *Hurnauth Roy*, W. R., III, 54

of offence, is likely to cause death, shall be punished as by schedule on opposite page.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

160. Whoever commits an affray shall be punished as by schedule on page 460.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161. Whoever, being, or expecting to be, a public servant, accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing, or forbearing to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant as such, shall be punished as by schedule on page 460.

Explanations.—"*Expecting to be a public servant.*" If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this Section.

"*Gratification.*"—The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

"*Legal remuneration.*"—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

"*A motive or reward for doing.*"—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*). A, a Moonsiff, obtains from Z, a banker, a situation in Z's bank for A's brother as a reward to A for deciding a cause in favor of Z. A has committed the offence defined in this Section.

(*b*). A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of rupees from the Minister of that power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favor in the exercise of his official functions to that power. A has committed the offence defined in this Section.

(*c*). A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this Section.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do, or to forbear to do, any official act, or in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render, or attempt to render, any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished as by schedule on page 460.

163. Whoever accepts or obtains, or agrees to accept, or

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
160	Committing affray ...	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one month, or fine of one hundred rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being, or expecting to be, a public servant, and taking a gratification other than legal remuneration in respect of an official act (*a*).	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant (*b*).	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for two years, or fine, or both.	Magistrate of the first or second class.

(*a*). A Joint Magistrate, in addition to punishing a police officer with fine, under Section 161 of the Penal Code, for taking a bribe in his administrative capacity, ordered his dismissal. *Held*, that the Joint Magistrate was competent to order both fine and dismissal. *Chunder Coomar Sein*, W. R., V., 14.

When a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others. *Mahomed Hossein*, W. R., V., 49.

An occasional or supernumerary peon, appointed under the orders of the Board of Revenue, in accordance with Section 6, Act V, of 1863, B. C., and paid under that Section by fees whenever employed, is a public servant under Clause 9, Section 21, Penal Code, and as such may be tried for receiving an illegal gratification under Section 161 of that Code. *Ramkisto Doss*, S. W. R., XVI., 27.

On a conviction of taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. *Mutty Lall Chuttopadhya*, S. W. R., XVI., 74.

(*b*). B, a putwary, accepts grain as consideration for showing favor in his functions as putwary. B has committed an offence under Section 161, not Section 165.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for one year, or fine, or both.	Magistrate of the first or second class.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for two years, or fine, or both, and confiscation of property, if purchased.	Ditto.

attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by the exercise of personal influence, any public servant to do, or to forbear to do, any official act, or in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render, or attempt to render, any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished as by schedule on page 461.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal who lays before the Government statements tending to show that the condemnation was unjust,—are not within this Section, inasmuch as they do not exercise, or profess to exercise, personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished as by schedule on page 461.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in, or related to, the person so concerned, shall be punished as by schedule on page 461.

Illustrations.

(*a*). A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*). A, a Judge, buys of Z, who has a cause pending in A's Court, Government Promissory Notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*). Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause, injury to any person, shall be punished as by schedule on opposite page.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this Section.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
170	Personating a public servant	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for three months, or fine of two hundred rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.

167. Whoever, being a public servant, and being as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may cause, injury to any person, shall be punished as by schedule on page 462.

168. Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished as by schedule on page 462.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished as by schedule on page 462.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does, or attempts to do, any act under colour of such office, shall be punished as by schedule on opposite page.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token, resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished as by schedule on opposite page.

CHAPTER X.

CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172. Whoever absconds in order to avoid being served with a summons, notice, or order, proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished as by schedule on opposite page; or, if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, by schedule on page 466.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished as by schedule on page 466; or, if the summons notice, or order, or proclamation is to attend in person, or by agent, or to produce a document in a Court of Justice, as by schedule on page 466.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished as by schedule on page 466; or, if the summons, notice, order, or proclamation is to attend in person, or by agent in a Court of Justice, as by schedule on page 467.

Illustrations.

(*a*). A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpœna issuing from that Court,

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If summons or notice require attendance in person, &c., in a Court of Justice.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Any Magistrate.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority (*a*).	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.

	If the order require personal attendance, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Court in which the offence is committed, subject to the provisions of Chapter XXXII of this Code, or if not committed in a Court, a Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.

(*a*). A person summoned as a witness is not liable under s. 174, unless he intentionally omits to attend at the place or time mentioned in the summons, or unless he wilfully departs from the place where he had attended before the time at which it was lawful for him to depart. A man is not bound to wait the arrival of a Magistrate when it s quite uncertain whether he will or will not be there till the middle of the day. S. W., R., XIV., 20.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence,* &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the information required respects the commission of an offence,* &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.

* See Note *, S. 141.

intentionally omits to appear. A has committed the offence defined in this Section.

(*b*). A, being legally bound to appear before a Zillah Judge as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this Section.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished as by schedule on page 467; or, if the document is to be produced or delivered up to a Court of Justice, as by schedule on page 467.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this Section.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished as by schedule on opposite page; or, if the notice or information required to be given respects the commission of an offence,* or is required for the purpose of preventing the commission of an offence,* or in order to the apprehension of an offender, as by schedule on opposite page.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject, which he knows or has reason to believe to be false, shall be punished as by schedule on opposite page; or, if the information which he is legally bound to give, respects the commission of an offence,* or is required for the purpose of preventing the commission of an offence,* or in order to the apprehension of an offender, as by schedule on opposite page.

Illustrations.

(*a*). A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the District that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this Section.

(*b*.) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under Clause 5, Section 7, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police Station, wilfully misinforms the Police Officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this Section.

N. B.—Section 177 of the Penal Code does not apply to the case of any person who is examined by a police officer making a false statement, but to cases where, by law, landholders or village watchmen are bound to give information, and to other analogous cases of the same description. *Luchmee Singh*, W. R., XII., 23.

178. Whoever refuses to bind himself by an oath to state the truth, when required so to bind himself by a public servant, legally competent to require that he shall so bind himself, shall be punished as by schedule on page 470.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished as by schedule on page 470.

* See Note *, S. 141.

* See Note *, S. 141.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Court in which the offence is committed, subject to the provisions of Chapter XXXII of this Code, or if not committed in a Court, a Magistrate of the first or second class.
179	Being legally bound to state truth and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for three months, or fine of five hundred rupees, or both.	Ditto.

181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.*	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one month, or fine of five hundred rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one month, or fine of two hundred rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Ditto.

* Statements made by a prisoner for the purposes of his defence are not "information to a public servant," &c. *Darir Khan*, N. W. P., 2nd April 1870.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
187	Omission to assist public servant when bound by law to give such assistance.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Magistrate of the first or second class.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine of five hundred rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Ditto.

180. Whoever refuses to sign any statement made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished as by schedule on page 470.

181. Whoever, being legally bound by an oath to state the truth on any subject to any public servant or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished as by schedule on page 471.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known by him, shall be punished as by schedule on page 471.

Illustrations.

(*a*). A informs a Magistrate that Z, a Police Officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dimiss Z. A has committed the offence defined in this Section.

(*b*). A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this Section.

N. B.—In *Huree Ram*, N. W. P., 29th July 1871, it has ruled that no one but the public servant against whom the offence was committed has any ground for complaint under this Section. This ruling seems open to grave question.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished as by schedule on page 471.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of a public servant, as such, shall be punished as by schedule on page 471.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property, not intending to perform the obligations under which he lays himself by such bidding, shall be punished as by schedule on page 471.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished as by schedule on page 471.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished as by schedule on opposite page; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purpose of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence,* or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, * or of having escaped from lawful custody, shall be punished as by schedule on opposite page.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order,

* Offence to be construed as anything made punishable by the Penal Code, or by any special or local law as therein defined.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If such disobedience causes danger to human life, health, or safety, &c.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment for six months, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Ditto.

he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes, or tends to cause, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished as by schedule on page 472; and if such disobedience causes, or tends to cause, danger to human life, health or safety, or causes, or tends to cause, a riot or affray, shall be punished as by schedule on opposite page.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant, lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this Section (*a*).

(*a*). The order, the disobedience of which may be punished, must be a special order issued under some distinct law, and must be either to abstain from an act, or take certain action with certain property in possession of the person to whom the order is addressed.

To prevent further irregularity, for the future every Magistrate punishing under Section 188 shall quote the order which was disobeyed, and note the law under which that order was promulgated. C. Prov. Bk. Cir. VII of 1866.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished as by schedule on opposite page.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished as by schedule on opposite page.

CHAPTER XI.

False Evidence and Offence against Public Justice.

191. Whoever, being legally bound by an oath or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this Section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this Section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*). A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*). A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*). A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z, A in good faith believing it to be so. Here A's statement is merely

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
193	Giving or fabricating false evidence in a judicial proceeding.*	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, and fine; *if a second conviction, whipping in addition may be given* (*a*).	Court of Session, or Magistrate, first class.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine, *also whipping as above.*	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.†	Ditto ...	Ditto ...	Not bailable	Transportation for life, or rigorous imprisonment for ten years, and fine; *if second conviction, whipping may also be administered* (*a*).	Court of Session.

* A, B, and C are charged with perjury; each is entitled to have a specific charge made against him tried independently of a like charge against another person. *Bhowanee Sunkur Huribhaie*, Bom. H. Ct., 1st July 1868; *Ruttee Ram*, N. W. P., 14th January 1870; *Ameer Ali*, N. W. P., 16th June 1871. An examination of a complainant under S. 144 is a stage of a judicial proceeding. *Mata Dhyal*, N. W. P., 13th January 1871. The law does not require proof of a corrupt intention. *Ameer Ali*, N. W. P., 16th June 1871.

(*a*) Whipping can never be administered to females or to persons sentenced to imprisonment for five years and upwards. See n. S. 455.

† See Note *, S. 187.

as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d*). A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(*e*). A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law, before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching on any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(*a*). A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*). A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*). A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows the officers of the police are likely to search. A has fabricated false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished as by schedule on opposite page; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished as by schedule on opposite page.

Explanation 1.—A trial before a Court Martial or before a Military Court of Request is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before a Magistrate, for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before an Officer deputed by a Court of Justice to ascertain on the spot the boundaries of lands, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence (*a*).

(*a*). An alternative finding under Section 381 of the Code of Criminal Procedure should not be resorted to, until both Committing Officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges; and such a finding cannot be

based in a case of giving false evidence upon two statements which are not absolutely contradictory, the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favor of the possible reconciliation of the statements must be made. *Bedoo Noshyo*, W. R., XII., 11.

Before an accused person can be convicted of giving false evidence, it must be proved that he made the statements which are the basis of the charge, and further that he made them with the necessary criminal intention. The mere fact that a man has made contradictory statements does not necessarily prove that he has committed an offence under Section 193. The Court must be satisfied as to the intention with which the statements were made. *Denonath Bujjur*, W. R., IX., 52.

A witness falsely deposing in another's name should be charged with giving false evidence under Section 193, and not with cheating by personation under Section 419, of the Penal Code. *Prema Bhica*, 1 Bom. Rep., 89; W. R., VI., Cr., 39.

Pearson, J., considers that much evil results from over-enforcing the law relating to false evidence among a people whose nature it is to speak falsely: the end will be that people will be afraid to enter our Courts, and public sympathy will be enlisted on the side of the offenders, and not of the law. *Murroo*, 1865, 224.

Where a prisoner produced as evidence an account book, one page of which had been fraudulently abstracted, and another substituted for it:- *Held* that he was not guilty of the offence of attempting to use, as genuine, fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered. *Modoosoodon Shaw*, W. R., VII., 23.

A deliberate mis-statement made in a Court of Justice, whether it tends to endanger the life and property of others, or to defeat and impede the progress of justice, is not an offence which should be lightly passed over. But for a simple mis-statement from which no such inferences can be drawn, a comparatively light sentence will suffice, particularly where the prisoner pleads guilty and throws himself on the mercy of the Court. *Gurgoon Aheer*, W. R., VII., 37.

There ought to be a *locus pœnitentiæ* for witnesses who have deposed falsely to retract their false statements. *Gullie Mullick*, W. R., X., 1864.

The denial by a witness of any relationship to his brother, whose witness he was, was held to be the mildest form in which false evidence could be given, and to merit only a mild punishment. *Govind Sahoo*, W. R., XIV., 1864.

A plaintiff before a Moonsiff came and petitioned the Judge, complaining that the Moonsiff had improperly refused to examine his witnesses, and had dismissed his suit, although informed that witnesses were in attendance, and the Judge upon examining the petitioner upon solemn affirmation, and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving false evidence: *Held* that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made, and the evidence given *coram non judice*, could not form the subject of a prosecution for false evidence. *Chota Jadub Chunder Biswas*, W. R., 1864, Cr., 15.

It is essential, in order to sustain a charge, under Section 193 of the Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was made. A charge under this section should specify, not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made.

The intention and circumstances with and under which the particular statement is made, must, in each case, be considered before it can be held that perjury has been committed, not simply the mere fact that a person has made a statement which contradicts a previous statement. *Soonder Mookhuree*, W. R., IX., 25; and *Denonath Bujjur*, IX., 52.

The deposition alleged to contain the false statement *must* be proved. W. R., VII., 13.

A commits the abetting of perjury when, in a case where B falsely representing himself to be C and the writer of a document signed by C, A, although he knows that B is not C, and had not written such document, still brings forward B as C and as the writer of the document. *Chandee Charan Nath*, W. R., VIII., 5.

No man can be convicted of perjury except on proof of facts, which, if accepted as true, show, not only that it is incredible, but also that it is impossible, that his statement made on oath can be true. Mere theories of medical men or skilled witnesses of any sort are not to upset facts positively proved. *Ikmed Ali*, W. R., XI., 25.

A Court of Session cannot, without further enquiry, commit, under Section 472, Criminal Procedure Code, for trial, a person when contradictory statements only are proved, and both such contradictiory statements are not made before it. *Nomul*, W. R., XII., 69.

A corrupt intention in making a false statement may be inferred from circumstances. Rhutten Ram, W. R., II., 63.

In a case of giving false evidence by making contradictory statements, one of which the accused knew to be false, it is not sufficient to support the falseness of either story by the other deposition, but there must be independent evidence of the falseness of either story. *Kola*, W. R., XII., 66.

In a case of false evidence, reading extracts from the alleged conflicting statements of the prisoner is not sufficient to enable the jury to form a fair opinion on the question. The whole of the depositions given on each occasion ought to be laid before the jury. *Kally Churn Gangooly*, W. R., VI., 92.

A made an application for a new trial under Section 21 of Act XI of 1865. He filed a memorandum of his grounds, verified as a plaint, and therein knowingly made a false statement. *Held* (Glover, J., dissenting) that he had not thereby committed an offence under Section 191 or 192 of Penal Code. *In re Harman Manual*, 2 B. L. R., A. Cr., 1.

Evidence given in matters not judicial may be false evidence under Section 193 if it be proved that the false statement is made under the sanction of law. *Audheen Roy*, S. W. R., XIV., 24.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence* which is capital by this Code, or the law of England, or any special or local law, shall be punished as by schedule on page 476; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished as by schedule on page 480.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence* which by this Code, or the law of England, or any special or local law, is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as by schedule on page 480.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

196. Whoever corruptly uses, or attempts to use, as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished as by schedule on page 480.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished as by schedule on page 481.

198. Whoever corruptly uses, or attempts to use, any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished as by schedule on page 481.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant, or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished as by schedule on page 481.

* See Note *, S. 187.

* See Note *, S. 187.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If innocent person be thereby convicted and executed.	Shall not arrest without warrant.	Warrant ...	Not bailable	Death, or as above* ...	Court of Session.
195	Giving or fabricating false evidence with intent to procure conviction of an offence† punishable with transportation, or imprisonment for more than seven years.	Ditto ...	Ditto ...	Ditto ...	The same as for the offence; if a second conviction, whipping may also be administered (*a*).	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.	Court of Session or Magistrate, first class.

* See Punishment, S. 194, *ante*, p. 476.

† See Note *, S. 187.

(*a*) See Note (*a*), p. 476, *ante*.

197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Shall not arrest without warrant.	Warrant ...	Bailable ...	The same as for giving false evidence.	Court of Session, or Magistrate of the first class.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence* committed or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years and fine.	Court of Session.
	If punishable with transportation, or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session or Magistrate of the first class.
	If punishable with less than ten years' imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for one quarter of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.*

* See Note *, S. 141.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
202	Intentional omission to give information of an offence* by a person legally bound to inform.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Magistrate of the first or second class.
203	Giving false information respecting an offence† committed.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session or Magistrate of the first class.

* See Note *, S. 141. † See Note *, S. 187.

200. Whoever corruptly uses, or attempts to use, as true any such declaration, knowing the same to be false in any material point, shall be punished as by schedule on page 481.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of Sections 199 and 200.

201. Whoever, knowing or having reason to believe that an offence* has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence* which he knows or believes to be false, shall, if the offence* which he knows or believes to have been committed is punishable with death, be punished as by schedule on page 481; and if the offence* is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished as by schedule on page 481; and if the offence* is punishable with imprisonment for any term not extending to ten years, shall be punished as by schedule on page 481.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202. Whoever, knowing or having reason to believe that an offence* has been committed, intentionally omits to give any information respecting that offence* which he is legally bound to give, shall be punished as by schedule on opposite page.

* See Note *, S. 187.

203. Whoever, knowing, or having reason to believe, that an offence* has been committed, gives any information respecting that offence† which he knows or believes to be false, shall be punished as by schedule on opposite page.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates, or renders illegible, the whole or any part of such document, with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished as by schedule on opposite page.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished as by schedule on opposite page.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a Civil suit, shall be punished as by schedule on page 484.

* See Note *, S. 187. † See Note *, S. 141.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto	Magistrate of the first class.

209	False claim in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
*211	False charge of offence† made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto: *the offence charged being under Section 377, whipping may be given in addition if a second conviction* (*a*).	Ditto.
	If offence charged be capital, or punishable with transportation for life, or imprisonment for seven years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.
212	Harbouring an offender if the offence‡ be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Court of Session or Magistrate, first class.

* To constitute this offence, it must be shown that the accused knew there were no just or lawful grounds for instituting his false charge—*Queen* v. *Chidda*, N.-W. P., 1st December 1871.

† See Note *, S. 187.

‡ See Note *, S. 141.

(*a*). Whipping never administered to females or to persons sentenced to imprisonment for five years or upwards.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If punishable with transportation for life, or with imprisonment for ten years.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for three years, and fine.	Court of Session or Magistrate of the first class.
	If punishable with imprisonment for one year, and not for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for one quarter of the longest term, and of the description provided for the offence, or fine, or both.	By the Magistrate of the first class, or by the Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence* be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session or Magistrate of the first class.

* See Note *, S. 187.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice, or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a Civil suit, shall be punished as by schedule on page 484.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished as by schedule on page 484.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this Section.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished as by schedule on page 485.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property, or interest in property, to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished as by schedule on page 485.

211. Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an offence,* knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished as by schedule on page 485; and if such criminal proceeding be instituted on a false charge of an offence* punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punished as by schedule on page 485.

A Deputy Magistrate was held to have acted irregularly in dismissing a complaint and directing the trial of the complainant under Section 211, Penal Code, without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present. *Heera Lall Ghose*, S. W. R., XIII, 37.

Where a person is charged under Section 211 of the Penal Code with having, with intent to injure, falsely charged another with an offence, knowing that there is no just and lawful ground for the same, the party accused should be allowed to show the information on which he acted, and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him. *Nevalaul Valad Umedmal*, 3 Bom. Rep., C. A., 16.

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* See Note *, S. 141.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If with imprisonment for less than ten years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment for one quarter of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
214	Gift made to cause restoration of property in consideration of screening offender if the offence* be capital.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.

* See Note *, S. 187.

When a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding and entered in the calendar. *Arjoon*, 1 Bom. Rep., 87.

Where a Deputy Magistrate instituted proceedings against a complainant and his witnesses for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft case, but was bound to prove the falsity of the complaint of theft in the presence of the accused. *Ram Dass Boistub*, W. R., XI, 35.

It is not a sufficient ground for a charge under Section 211 of the Penal Code that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence or a statement which is not, or ought not to be, sufficient to satisfy a reasonable mind, if in truth he did not know, at the time he made the complaint, that there was no just and lawful grounds for making it. *Pran Kishen Bid*, W. R., VI, 15.

It is for the prosecution to make out a distinct case under Section 211, not for the prisoner in the first instance to shew that he had just or lawful grounds. *Nobo Kisto Ghose*, W. R., VIII, 87.

A Magistrate should make some inquiry to satisfy himself that Police proceedings are not partial and improper, as complained of before charging the complainant under Section 211. *Gaur Mohun Sing*, B. L. R., VIII, App., 11.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

212. Whenever an offence* has been committed, whoever harbours or conceals a person whom he knows, or has reason to believe, to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished as by schedule on page 485; and if the offence* is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished as by schedule on page 486; and if the offence* is punishable with imprisonment which may extend to one year and not to ten years, shall be punished as by schedule on page 486.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

213. Whoever accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence,* or of his screening any person from legal punishment for any offence,* or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence* is punishable with death, be punished (*a*) as by schedule on page 486; and if the offence* is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished as by schedule on page 486; and if the offence* is punishable with imprisonment not extending to ten years, shall be punished as by schedule on page 488.

214. Whoever gives, or causes, or offers, or agrees, to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence,* or of his screening any person from legal punishment for any offence,* or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence* is punishable with death, be punished as by schedule on page 488; and if punishable with transportation for life, or with imprisonment for ten years as by schedule on page 488; and if the offence* is punishable with imprisonment not extending to ten years, shall be punished as by schedule on page 490.

* See Note *, S. 141.

* See Note *, S. 187.

(*a*). It is not an offence for a husband or wife to harbour each other.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If with imprisonment for less than ten years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment for quarter of the longest term and of the description provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence* be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.

	If punishable with transportation for life,* or with imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
	If with imprisonment for one year,* and not for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest terms, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making or pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Ditto.

* See Note *, S. 141.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, or fine, or both.	Court of Session.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence* be capital.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, with or without fine.	Court of Session, or Magistrate of the first class.
	If with imprisonment for less than ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, with or without fine.	Magistrate of the first or second class.

* See Note *, S. 187.

Exception.—The provisions of Sections 213 and 214 do not (*a*) extend to any case in which the offence* consists only of an act, irrespective of the intention of the offender, and for which act the person injured may bring a civil action.

Illustrations.

(*a*). A assaults B with intent to commit murder. Here, as the offence does not consist of the assault only, irrespective of the intention to commit murder, it does not fall within the exception and cannot therefore be compounded.

(*b*). A assaults B. Here, as the offence consists simply of the act, irrespective of the intention of the offender, and as B may have a civil action for the assault, it is within the exception and may be compounded.

(*c*). A commits the offence of bigamy. Here, as the offence is not the subject of a civil action, it cannot be compounded.

(*d*). B commits the offence of adultery with a married woman. The offence may be compounded.

215. Whoever takes, or agrees, or consents to take, any gratification under pretence, or on account of helping any person to recover any moveable property, of which he shall have been derived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished as by schedule on page 490.

216. Whenever any person convicted of, or charged with, an offence,† being in lawful custody for that offence,† escapes from such custody, or, whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended, for an offence,† whoever, knowing of such escape or order for apprehension, harbours or conceals that person, with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say, if the offence* for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished as by schedule on page 490; if the offence* is punishable with transportation for life, or imprisonment for ten years, he shall be punished as by schedule on page 491; and if the offence* is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished as by schedule on page 491.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished as by schedule on page 491.

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished as by schedule on page 491.

* See Note *, S. 187. † See Note *, S. 141.

(*a*). A Court cannot take cognizance of a bargain to abstain from the prosecution of a person committing an offence like that of wilfully giving false evidence. *Balkishen*, N.-W. P., 1st July 1871.

* See Note *, S. 141.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Shall not arrest without warrent.	Warrant ...	Not bailable.	Transportation for life or imprisonment of either description for fourteen years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for ten years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than ten years.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the 1st class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons ...	Ditto ...	Simple imprisonment for two years, or fine, or both.	Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine or both.	Ditto.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished as by schedule on page 491.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished as by schedule on page 492.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with, or liable to be apprehended for an offence,* intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows.

If the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence* punishable with death, as by schedule on page 492.

If the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence* punishable with transportation for life, or imprisonment for a term which may extend to ten years, as by schedule on page 492.

If the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence* punishable with imprisonment for a term less than ten years as by schedule on page 492.

222. Whoever, being a public servant, legally bound as such public servant to apprehend, or to keep in confinement, any person under sentence of a Court of Justice for any offence,* or if the person was lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished if the person in confinement, or who ought to have been apprehended, is under sentence of death, as by schedule on opposite page; if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life, or penal servitude for life, or to transportation, or penal servitude, or imprisonment for a term of ten years or upwards, as by schedule on opposite page; if the person in confinement, or who ought to have apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, as by schedule on opposite page.

223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with, or convicted of, any offence,* or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished as by schedule on opposite page.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence* with which he is charged, or of which he has been convicted, or escapes, or attempts to escape, from any custody in which he is lawfully detained for any such offence,* shall be punished as by schedule on opposite page.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence* with which he was charged, or of which he was convicted.

* See Note *, S. 187.

* See Note *, S. 187.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
	If charged with an offence* (*a*), punishable with transportation for life, or imprisonment for ten years.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
	If charged with a capital offence.*	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for ten years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

	If under sentence of death.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
226	Unlawful return from transportation.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, and fine and rigorous imprisonment for three years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for six months, or fine of one thousand Rupees, or both.	Court in which the offence is committed, subject to the provisions contained in Chapter XXXII of this Code.

* See Note *, S. 187.

(*a*). Where a Police Officer, duly appointed under Act V of 1861, was engaged in the discharge of his duty as such Police Officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly, and a person who rescued the party apprehended was convicted of rescuing, &c, within the meaning of Sec. 225, P. C. *Assan Shureef*, S. W. R., XIII, 75.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
229	Personation of a juror or assessor.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence,* or rescues, or attempts to rescue, any other person from any custody in which that person is lawfully detained for an offence,* shall be punished as by schedule on page 496.

Or, if the person to be apprehended, or the person rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence* punishable with transportation for life, or imprisonment for a term which may extend to ten years, shall be punished as by schedule on page 496.

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence* punishable with death, shall be punished as by schedule on page 496.

Or, if the person to be apprehended or rescued is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished as by schedule on page 496.

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished as by schedule on page 497.

225A. Whoever escapes, or attempts to escape, from any custody in which he is lawfully detained for failing, under the Code of Criminal Procedure, to furnish security for good behaviour, shall be punished as by schedule on page 497.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished as by schedule on page 497.

See Note *, S. 187.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished as by schedule on page 497.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished as by schedule on page 497 (*a*).

(*a*). It must be clearly proved that there is an intention to insult before conviction can be had under this Section. *Hurry Kishen Dass*, S. W. R., XV, 87.

It is not an offence under this section simply because witnesses in a case give inconsistent evidence, give it reluctantly, and take up the time of the Court. *Chota Hurry Pramanick Jantu*, S. W. R., XV, 5.

229. Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or knowing himself to have been so empanelled, returned, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished as by schedule on page 498.

CHAPTER XII.

OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

"230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used." (Act XIX of 1872.)

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is designated as the Queen's coin.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
	If Queen's coin ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Court of Session.
236	Abetting in India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.

237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Court of Session, or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for ten years, and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine of ten times the value of the coin counterfeited, or both.	Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he be came possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine.	Court of Session, or Magistrate of the first class.

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CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	May arrest without warrant.	Warrant ..	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
244	Persons employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ..	Ditto ...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.

Illustrations.

(*a*). Cowries are not coin.

(*b*). Lumps of unstamped copper, though used as money, are not coin.

(*c*). Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*). The coin denominated as the Company's Rupee is the Queen's coin.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished as by schedule on page 498.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished as by schedule on page 498.

233. Whoever makes, or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purpose of being used, or knowing, or having reason to believe, that it is intended to be used, for the purpose of counterfeiting coin, shall be punished as by schedule on page 498.

234. Whoever makes, or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purpose of being used, or knowing, or having reason to believe, that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished as by schedule on page 500.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing, or having reason to believe, that the same is intended to be used for that purpose, shall be punished as by schedule on page 500;

and if the coin to be counterfeited is the Queen's coin, shall be punished as by schedule on page 500.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished as by schedule on page 500.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing, or having reason to believe, that the same is counterfeit, shall be punished as by schedule on page 501.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin, which he knows, or has reason to believe, to be a counterfeit of the Queen's coin, shall be punished as by schedule on page 501.

239. * Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished as by schedule on page 501.

240. Whoever, having any counterfeit coin, which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished as by schedule on page 501.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but

* This section is not directed against the coiner. *Sheo Bux*, 23rd June 1871.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.

which he did not know to be counterfeit at the time when he took it into his possession, shall be punished as by schedule on page 501

Illustration.

A, a coiner, delivers counterfeit Company's Rupees to his accomplice B, for the purpose of uttering them. B sells the Rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the Rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the Rupees, discovers that they are counterfeit, and pays them away as if they were good. Here, D is punishable only under this Section, but B and C are punishable under Sections 239 or 240 as the case may be.

See the note to Section 239.

242. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished as by schedule on page 501.

243. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished as by schedule on page 502.

244. Whoever, being employed in any mint, lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished as by schedule on page 502.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished as by schedule on page 502.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished as by schedule on page 502.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight, or alters the composition of that coin, shall be punished as by schedule on opposite page.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished as by schedule on opposite page.

249. Whoever performs on any of the Queen's coins any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished as by schedule on opposite page.

250. Whoever, having coin in his possession with respect to which the offence defined in Sections 246 or 248 has been committed, and having known, at the time when he became possessed of such coin, that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished as by schedule on opposite page.

251. Whoever, having coin in his possession with respect to which the offence defined in Sections 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished as by schedule on opposite page.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Ditto.
254	Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine of ten times the value of the coin.	Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for ten years, and fine.	Court of Session.

256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause wrongful loss to Government.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both	Ditto.

252. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 246 or 248 has been committed, having known, at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished as by schedule on page 506.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 247 or 249 has been committed, having known, at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished as by schedule on page 506.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Sections 246, 247, 248, or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished as by schedule on page 506.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished as by schedule on page 506.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

The passing-off a one-anna stamp as a one-rupee stamp, is not counterfeiting a one-rupee stamp. *Shurroop Chunder Doss*, 11 W. R., 65.

256. Whoever has in his possession any instrument or material, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished as by schedule on page 507.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of any instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished as by schedule on page 507.

258. Whoever sells, or offers for sale, any stamp which he knows, or has reason to believe, to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished as by schedule on page 507.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished as by schedule on page 507.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished as by schedule on page 507.

261. Whoever, fraudulently, or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government, for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished as by schedule on page 507.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
262	Using a Government stamp known to have been before used.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.*

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.

* Where neither poverty, nor ignorance, nor overwhelming temptation can plead in extenuation, nothing but mawkish facility of temper in a Judge can prevent him from making a wholesome example of all offenders under this Chapter. *Oudh Book Cir. XXI of* 1869.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
265	Fraudulent use of false weight or measure.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Magistrate of the first or second class.

262. Whoever fraudulently, or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government, for the purpose of revenue, which he knows to have been before used, shall be punished as by schedule on page 509.

263. Whoever fraudulently, or with intent to cause loss to Government, erases or removes from a stamp issued by Government, for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells, or disposes of any such stamp from which such mark has been erased or removed, or sells, or disposes of, any such stamp which he knows to have been used, shall be punished as by schedule on page 509.

CHAPTER XIII.

OFFENCES RELATING TO WEIGHING AND MEASURING.

264. Whoever fraudulently uses any instrument for weighing, which he knows to be false, shall be punished as by schedule on page 509.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished as by schedule on opposite page.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished as by schedule on opposite page.

267. Whoever makes, sells, or disposes of any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished as by schedule on opposite page.

CHAPTER XIV.

OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

268. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger, or annoyance to the public, or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which is, and which he knows, or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished as by schedule on opposite page.

270. Whoever malignantly does any act which is, and which he knows, or has reason to believe to be likely, to spread the infection of any disease dangerous to life, shall be punished as by schedule on page 512.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore, or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished as by schedule on page 512.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Ditto.
272	Adulterating food or drink for man, intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Ditto.
273	Selling any food or drink as food and drink for man, knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of five hundred rupees.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c. (*a*).	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Any Magistrate.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for seven years, and fine, or both.	Court of Session.
282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Magistrate of the first or second class.

(*a*.) The actual driver and not the owner of a carriage is liable under section 279 of the Penal Code in case of a collision and injury to another arising out of rash driving. *Pernendoo Deo Rai*, S. W. R., XIV, 32.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished as by schedule on page 512.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing, or having reason to believe, that the same is noxious as food or drink, shall be punished as by schedule on page 512.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation, or to make it noxious. intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished as by schedule on page 513.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished as by schedule on page 513.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary, for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished as by schedule on page 513.

277. Whoever voluntarily corrupts or fouls. the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished as by schedule on page 513.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling, or carrying on business in the neighbourhood, or passing along a public way, shall be punished as by schedule on page 513.

279. Whoever drives any vehicle or rides on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished as by schedule on opposite page.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished as by schedule on opposite page.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished as by schedule on opposite page.

282. Whoever knowingly or negligently conveys, or causes to be conveyed, for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished as by schedule on opposite page.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury, to any person in any public way or public line of navigation, shall be punished as by schedule on page 516.

284. Whoever does, with any poisonous substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, shall be punished as by schedule on page 516.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	May arrest without warrant.	Summons ...	Bailable ...	Fine of two hundred rupees.	Magistrate of the first or second class.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Magistrate of the first or second class.

288	A person omitting to guard against probable danger to human life by the fall of any building, over which he has a right entitling him to put it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of two hundred rupees.	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Simple imprisonment for six months, or fine, or both.	Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for three months, or fine, or both.	Ditto.
293	Having in possession obscene book, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
294A	Keeping a lottery office ...	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...	Ditto ...	Fine of one thousand rupees.	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished as by schedule on page 516.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished as by schedule on page 516.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession, or under his care, as is sufficient to guard against any probable danger to human life from such machinery, shall be punished as by schedule on page 516.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished as by schedule on page 517.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished as by schedule on page 517.

290. Whoever commits a public nuisance* in any case not otherwise punishable by this Code, shall be punished as by schedule on page 517.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished as by schedule on page 517.

292. Whoever sells or distributes, imports, or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished as by schedule on page 517.

Exception.—This Section does not extend to any representation sculptured, engraved, painted, or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution or public exhibition, shall be punished as by schedule on page 517.

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* B, a prostitute, visits a dâk bungalow at the request of a person staying there, but commits no impropriety of speech, nor is guilty of any improper gesture or act in public, nor in any way causes annoyance to the public generally, or to any persons who in the exercise of their public right were lodging in the bungalow. B has committed no offence under this Section. *Mussamut Begum*, N. W. P., 18th August 1870.

A omits to keep his ponies from straying, he has committed no offence under this Section. *Joynath Mundul*, W. R., VI, 71.

It must be proved that injury, danger or annoyance has been caused, either in regard to the enjoyment of property, or the exercise of a public right on the part of a portion of the community, or of any particular class of people. *Lamessor*, W. R., IX, 70.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
297	Trespassing in a place of worship or sepulture, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.

294. Whoever sings, recites, or utters in or near any public place, any obscene song, ballad, or words to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government, shall be punished as by schedule on page 518.

"And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do, or forbear doing, anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished as by schedule on page 518."

No charge of an offence, punishable under any of the said sections 121A, 124A, and 294A, shall be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Local Government.

CHAPTER XV.

OFFENCES RELATING TO RELIGION.

295. Whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished as by schedule on page 518.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished as by schedule on opposite page.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished as by schedule on opposite page.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word, or makes any sound, in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished as by schedule on opposite page.

CHAPTER XVI.

OFFENCES AFFECTING THE HUMAN BODY.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

* When four men beat another at intervals so severely as to cause death, they must be presumed to have known that by such acts they were likely to cause death, and that when such acts were done without any grave or sudden provocation, or sudden fight or quarrel, the offence was murder, and was not reduced to culpable homicide not amounting to murder by the absence of intention to cause death. *Pooshoo* and *Hurriah*, W. R., IV, Cr., 33.

Absence of premeditation will not reduce murder to culpable homicide not amounting to murder. *Mahomed Elim Abdool Karim*, W. R., III, 40.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences affecting Life.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
302	Murder	May arrest without warrant.	Warrant ...	Not bailable	Death, transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Court of Session, or Magistrate of the first class.

Illustrations.

(*a*). A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

When a Judge acquits of intention to kill, but admits that the prisoner struck with a highly lethal weapon, with the knowledge that the act was likely to cause death, the conviction should be murder. *Sobeel Mahee*, W. R., V, 32.

When two members of an unlawful assembly use spears and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder. *Nazoor Fakir*, W. R., IV, Cr., 26.

When a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c., they were acquitted by the High Court of murder, and convicted of an offence under Section 314 of the Penal Code. *Kalla Chand Gope*, W. R., X, 59.

The prisoner kicked several times a man who was in his charge (who, having been severely beaten, had fallen senseless on the road) and thereby caused his death; the prisoner was found guilty of murder. *Nilmadhub Sircar*, W. R., III, 22.

Where an accused killed A, whom he had no intention of killing, by a blow with a highly lethal weapon like a sharp dâo, intended to kill B, he was held guilty of the murder of A. *Phomonee Ahun*, W. R., VIII, 78.

A wilfully and deliberately kills B, who is endeavouring to escape after having been detected in the act of housebreaking by night, with intention to commit theft. A has committed murder. *Durwan Ghir*, W. R., V, 73.

Two prisoners confessed that, having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him: *Held* that the grave provocation given reduced the crime to culpable homicide not amounting to murder. *Gour Chand Polie*, W. R., I, 17.

The sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion. *Tonoo*, W. R., VI, 46.

Where a man suddenly cut his wife's throat, it was held that, in order to establish that the act was not done under grave provocation so as to bring the case under Exception 1 of Section 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her. *Nokul Nushyo*, W. R., VII, 27.

Prisoner found deceased in the act of housebreaking by night in his house, and killed him with a kodali which he had called for, as he admitted, for that purpose. He was convicted of murder and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that not whilst deprived of power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally passed.

The Judge, however, in a letter to Government, suggested the mitigation of the punishment, which was accordingly reduced to imprisonment for six months. *Durwan Geer*, 1 Ind. Jur., N. S., 253.

To bring a case under Clause 4, Section 300 of the Penal Code, it must be proved that the accused, in committing the act charged, knew that it must in all probability be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. *Held* that a case in which the accused pursued after a thief and killed him after the house-trespass had ceased, did not fall within the 2nd Exception to Section 300 of the Penal Code; the right of private defence of property continuing, under Clause 5, Section 105 of that Code, only so long as the house-trespass continues. *Balakee Jolaked*, W. R., X, 9.

Intoxication is no excuse for a man throttling to death another, and a weaker man, who was also intoxicated. The assessors having brought the case within Exception 4 of Section 300 of the Penal Code without any good evidence or substantial grounds, the Sessions Judge was held to have correctly overruled their verdict, and found the prisoner guilty of murder. *Akulpattee Gossain*, W. R., V, 58.

The prisoners detected a weak, half-starved old woman stealing their rice, and so used their right of private defence that she died from

(*b*). A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowingly it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c*). A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, A not knowing that he was there: here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is laboring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death; or

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

3rdly.—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

4thly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*). A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*). A, knowing that Z is laboring under such a disease that a blow is likely to cause his death, strikes him with intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z

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the injuries they inflicted. The prisoners were held guilty by the majority of the Court of murder (*dissentiente* Campbell, J.). *Queen* v. *Gokool Bowree*, 5 W. R., Cr., 33.

Two parties met each other in a drunken state and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple as the latter was rising, or had just risen from the ground, causing instant death. *Held* that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of Clauses 2 and 3, Section 300, Indian Penal Code. *Queen* v. *Dasser Bhooyan*, 8 W. R., Cr., 71.

In a case of murder by consent, held that evidence of consent, which would be sufficient in a civil transaction, must be equally sufficient in exculpation of a prisoner's guilt. *Ananto Burnaugat*, W. R., VI, 57.

A conviction for murder was held to be wrong in a case when a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent and knocked him over, thereby causing his death. *Queen* v. *Kewal Dosad*, W. R., Cr., 36.

is laboring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(*c*). A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d*). A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

Illustrations.

(*a*). A, under the influence of passion, excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*). Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c*). A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*). A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition and that A has perjured himself. A is moved to sudden passion by these words and kills Z. This is murder.

(*e*). A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*). Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the

assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits murder shall be punished as by schedule on page 522.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death (*a*).

(*a*). In North-Western Provinces, and Central Provinces, and Calcutta (North-Western Provinces, 20th December 1862; Calcutta, 6th February 1863; Central Provinces, 20th March 1863), when Judges convict of culpable homicide not amounting to murder, they shall, in their finding, invariably mention under which of the exceptions noted under Section 300 the case has fallen.

Held, that where, from the circumstances it appeared that a child who had been exposed by the prisoner died, but that death was not caused except very remotely by the exposure, the prisoner, though guilty under Section 317 of the Penal Code, could not be convicted of murder. That Section contemplates cases in which death is caused from cold or some other result of exposure. *Khodabux Fakeer*, W. R., X, 52.

Proof of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death. *Joichand Mundle*, W. R., VI, 60.

In a case of murder, where a man was struck on the head in a boat with a heavy paddle, and knocked overboard in a large river in the height of the rains, and had never been heard of since, it was held impossible to suppose that the man was still alive. *Pooreesoollah Shikdar*, W. R., VII, 14.

Though the evidence was held to be sufficient to convict the accused of murder, yet as the evidence gave rise to doubts as to the precise part

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Offences affecting Life.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
305	Abetment of suicide committed by a child, or insane, or delirious person, or an idiot, or a person intoxicated.	May arrest without warrant.	Warrant ...	Not bailable.	Death, or transportation for life, or imprisonment for ten years, and fine.	Court of Session.
306	Abetting the commission of suicide.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
307	Attempt to murder ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.

taken by the prisoner, it was thought safer to remit the capital sentence and pass one of transportation for life. *Lall Jhah*, W. R., I, 48.

When two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual killer. If one stood by while the crime was being committed, he would be an abettor. *Jan Mahomed*, 1 W. R.,

Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent. *Hyder Jolaha*, W. R., VI, 83.

In order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence. *Mohomed Hossein*, W. R., Cr., 31.

A Judge was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found. *Budderoodeen*, W. R., II, 20.

A murdered B, believing him to be a wizard, the cause of A's child's illness, and that by killing B his child's life might be saved. A's sentence of death was commuted to transportation for life. *Ooorum Sungra*, W. R., VI, 82.

In a case of murder commited in a drunken squabble, it was held that voluntary drunkenness, though it does not palliate any offence, may be taken into account as throwing light on the question of intention. *Ram Sahoy Bhar*, W. R., 1864, Cr., 24.

When prisoners confess in the most circumstantial manner to having committed a murder, the finding of the body is not absolutely essential to a conviction. *Petta*, W. R., IV, Cr., 19.

304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished as by schedule on page 522.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished as by schedule on page 527.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished as by schedule on page 527.

307. Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be punished as by schedule on page 527.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

Illustrations.

(*a*). A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this Section.

(*b*). A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this Section, though the death of the child does not ensue.

(*c*). A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence defined in this Section. A fires the gun at Z. He has committed the offence defined in this Section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this Section.

(*d*). A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this Section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this Section.

308. Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished as by schedule on

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Offences affecting Life.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
308	Attempt to commit culpable homicide.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Ditto.
309	Attempt to commit suicide.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, and fine.	Magistrate of the first or second class.
311	Being a thug ...	Ditto ...	Ditto ...	Not bailable	Transportation for life, and fine.	Court of Session.
Of the Causing of Miscarriage; of Injuries to unborn Children; of the Exposure of Infants; and of the Concealment of Births.						
312	Causing miscarriage ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of the Causing of Miscarriage; of Injuries to unborn Children; of the Exposure of Infants; and of the Concealment of Births.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the woman be quick with child.	Shall not arrest without warrant.	Warrrant ...	Bailable ...	Imprisonment of either description for seven years, and fine.	Court of Session.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
	If act done without woman's consent.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.

page 529; and if hurt is caused to any person by such act, shall be punished as by schedule on page 529.

Illustration.

(*a*). A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this Section.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished as by schedule on page 529 (*a*).

(*a*). A prisoner found guilty under Section 309 of the Indian Penal Code of an attempt to commit suicide must be sentenced to some imprisonment, and not merely to payment of a fine. *Chenviowa*, 1 Bom. Rep., 4.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

311. Whoever is a thug shall be punished as by schedule on page 529.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished as by schedule on page 529; and if the woman be quick with child, shall be punished as by schedule on opposite page.

Explanation.—A woman who causes herself to miscarry is within the meaning of this Section (*a*).

(*a*). This offence can only be committed when a woman is in fact pregnant; abetment will, however, stand whether pregnant or not. *Jhumpa*, S. W. R., XV, 4.

313. Whoever commits the offence defined in the last preceding Section without the consent of the woman, whether the woman is quick with child or not, shall be punished as by schedule on page 530.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished as by schedule on page 530.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished as by schedule on page 530.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished as by schedule on page 530.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act, which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of a quick unborn child with which she is pregnant is thereby caused. A is guilty of the offence defined in this Section.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of the Causing of Miscarriage; of Injuries to unborn Children; of the Exposure of Infants; and of the Concealment of Births.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
317	Exposure of a child under 12 years of age, by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, or fine, or both.	Court of Session.
318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
	Of Hurt.					
323	Voluntarily causing hurt...	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Any Magistrate.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished as by schedule on opposite page.

Explanation.—This Section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child die before, or after, or during its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished as by schedule on opposite page.

319. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

320. The following kinds of hurt only are designated as "grievous:"—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause, or knows himself to be likely to cause, is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished as by schedule on opposite page (*a*).

(*a*). The prisoner having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and after she was down slapped her with his open hand. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen: *Held* under the circumstances that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder. *Punchanun Tantee*, W. R., V, 97.

When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide, but grievous hurt. *Megha Meeah*, W. R., II, 39.

When the result of a joint attack by several persons on one man is the fracture of his arm, the offence committed is grievous hurt and not assault. *Ramtokul Singh*, W. R., V, 12.

A man who, by a single blow with a deadly weapon, killed another man who, at dead of night, was entering his room for the purpose of having criminal intercourse with his wife, was held guilty of causing grievous hurt on a grave and sudden provocation. *Chullundee Poramanick*, W. R., III, 55.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Hurt.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.

The amount of punishment for cutting off a wife's nose for intriguing with another man, depends on the time of the commission of the grievous hurt, whether it was at the instant the husband found himself dishonored, or long afterwards. *Sutamut Russoya*, W. R., IV, 17.

Where a wife died from a chance kick in the spleen inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself and by his conduct immediately afterwards that he had no intention or knowledge that the act was likely to cause hurt endangering human life: *Held* that the husband was guilty of an offence under Sections 319 and 321 of the Penal Code, and not of an offence under Sections 320 and 322. *Bysagoo Noshyo*, W. R., VIII, 29.

324. Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished as by schedule on opposite page.

325. Whoever, except in the case provided by Section 335, voluntarily causes grievous hurt, shall be punished as by schedule on opposite page.

See note to S. 323.

326. Whoever, except in the case provided by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished as by schedule on opposite page.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer, or any person interested in such sufferer, to do anything which is illegal, or which may facilitate the commission of an offence,* shall be punished as by schedule on page 536.

328. Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug, or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence,* or knowing it to be likely that he will thereby cause hurt, shall be punished as by schedule on page 536.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer, or any person interested in such sufferer, to do anything that is illegal, or which may facilitate the commission of an offence,* shall be punished as by schedule on page 536.

330. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence* or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished as by schedule on page 537.

* See Note *, S. 187.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Hurt.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.*	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.*	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.

330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c. (a).	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for seven years, and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for ten years, and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for ten years, and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for one month, or fine of five hundred rupees, or both.	Any Magistrate.

* See Note *, S. 187.

(a). To bring a case under this section, it must be proved that the hurt was caused with intent to extort a confession of some offence or misconduct punishable under the Indian Penal Code (or some special or local law); a confession extorted with reference to a charge of witchcraft is no such confession. *Baboo Moonda*, S. W. R., XIV, 22.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Hurt.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for four years, or fine of two thousand rupees, or both.	Court of Session, or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three months, or fine of two hundred and fifty rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine of five hundred rupees, or both.	Magistrate of the first or second class.

Illustrations.

(*a*). A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this Section.

(*b*). A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this Section.

(*c*). A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this Section.

(*d*). A, a zemindar, tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this Section.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence* or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished as by schedule on page 537.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by that person in the lawful discharge of his duty as such public servant, shall be punished as by schedule on page 537.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by that person in the lawful discharge of his duty as such public servant, shall be punished as by schedule on page 537.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished as by schedule on page 537.

335. Whoever causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished as by schedule on opposite page.

Explanation.—The last two sections are subject to the same provisoes as Exception 1, Section 300.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished as by schedule on opposite page.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished as by schedule on opposite page.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished as by schedule on page 540.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or

* See Note *, S. 187.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Hurt.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
338	Causing grievous hurt by an act which endangers human life, &c.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for two years, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
	Of Wrongful Restraint and Wrongful Confinement.					
341	Wrongfully restraining any person.	May arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Magistrate of the first or second class.

343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for two years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.

water, which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this Section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations.

(*a.*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b.*) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Whoever wrongfully restrains* any person, shall be punished as by schedule on page 540.

342. Whoever wrongfully confines any person, shall be punished as by schedule on page 540.

343. Whoever wrongfully confines any person for three days or more, shall be punished as by schedule on page 541.

344. Whoever wrongfully confines any person for ten days or more, shall be punished as by schedule page 541.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished as by schedule on page 541.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to, or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished as by schedule on page 541.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal or to give any information which may facilitate the commisison of an offence,* shall be punished as by schedule on page 541.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence* or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished as by schedule on page 541 (*a*).

(*a*). *Held* by the majority of the Court that the prisoners were rightly convicted of wrongful confinement of a woman, the facts of the case showing that she never went willingly to the prisoner's house, and was not a willing inmate while she was there. *Ameen Daraz*, W. R., IV, 3.

A sentence of fine only cannot be passed, under Section 348 of the Penal Code, for wrongful confinement to extort confession: part of the sentence must be imprisonment. *Petumber Dass*, W. R., V, 5.

The time during which a party is kept in wrongful confinement is immaterial, except with reference to the extent of punishment.

349. A person is said to use force to another if he causes

* To constitute wrongful restraint, a *particular* person must be restrained, not any one possible, but unknown.

* See Note *, S. 187.

motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion, as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described:—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion, or change or cessation of motion, takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a.*) Z is sitting in a moored boat on a river. A unfastens the mooring, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b.*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(*c.*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d.*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z: he has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e.*) A throws a stone intending, or knowing it to be likely, that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(*f.*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending, or knowing it to be likely, that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(*g.*) Z is bathing. A pours into the bath, water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling: A has therefore

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Criminal Force and Assault.

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant (*a*) fromdis charge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty	Ditto ...	Ditto ...	Ditto ...	Ditto; *for second conviction whipping may be given in addition* (*b*).	Ditto.

(*a*.) A collectorate peadah deputed to keep the peace during distraint, from the time the duty is entrusted to him and he starts to execute it, until he has wholly executed it, and while he is going to the spot to carry out the duty with which he was entrusted in the execution of his duty, is a public servant. *Metho Mullah*, S. W. R, XIII, 48.

(*b*.) Whipping never administered to females.

intentionally used force to Z; and if he has done this without Z's consent, intending, or knowing it to be likely, that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(*h.*) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

351. Whoever makes any gesture or any preparation, intending, or knowing it to be likely, that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit "an assault."

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a.*) A shakes his fist at Z, intending, or knowing it to be likely, that he may thereby cause Z to believe that A is about to strike Z. A has commited an assault.

(*b.*) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely, that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c.*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished as by schedule on opposite page.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought, or voluntarily provoked, by the offender as an excuse for the offence; or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

353. Whoever assaults or uses criminal force to any person, being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attemped to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished as by schedule on opposite page.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished as by schedule on opposite page.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonor that person, otherwise than on grave and sudden provocation given by that person, shall be punished as by schedule on page 546.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished as by schedule on page 546.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished as by schedule on page 546.

358. Whoever assaults or uses criminal force to any per-

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Criminal Force and Assault.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Ditto.

son on grave and sudden provocation given by that person, shall be punished as by schedule on opposite page 546.

Explanation.—The last section is subject to the same explanation as Section 352.

359. Kidnapping is of two kinds,—kidnapping from British India, and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from British India.

361. Whoever takes or entices any minor under fourteen years of age, if a male, or under sixteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words* "lawful guardian" in this Section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This Section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362. Whoever by force compels, or, by any deceitful

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* The lawful guardian of a person is not one who has constituted himself guardian of a stray child, but one who has obtained lawful authority to assume such office. *Buldeo*, N.-W. P., 8-7-70.

The consent of a girl under 16 years of age, kidnapped or abducted to compel her marriage, does not affect the offence, nor is it necessary to prove the taking or enticing away to have been by force or fraud. *Amgod Bugeah*, W. R., II, 61.

To bring a case under Section 361 of the Penal Code, there must be a taking or enticing of a child out of the keeping of its lawful guardian, without his consent. *Gunder Sing*, W. R., IV, 6.

A person who carries off, without the consent of her guardian, a girl to whom he had been betrothed by her father after the father had changed his mind and broken off the marriage, is guilty of kidnapping, punishable under Section 363 of the Penal Code. *Gooroodass Rajbunsee*, W. R., IV, 7.

The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature. *Mussamut Bhoodeea*, W. R., VIII, 3.

The offence described in Section 363 of the Penal Code is included in that described in Section 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section. *Shama Sheikh*, W. R., VIII, 35.

Under Section 361 of the Penal Code (kidnapping from lawful guardianship), the consent of a minor is immaterial, nor do force and fraud form elements of the offence. *Sookee*, W. R., VII, 36.

When a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under Section 363 of the Penal Code only, and of the latter under Section 368 only; while the separate conviction of both under 366 was quashed. *Isree Pandey*, W. R., VII, 56.

An enticing away of a child playing on a public road is kidnapping from lawful guardianship. *Mussamut Oojeerun*, W. R., VII, 98.

The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for kidnapping.

There is nothing illegal in passing separate sentences for kidnapping and for selling for purposes of prostitution. *Doorga Doss*, W. R., VII, 104.

To support a conviction for kidnapping under Sections 361 and 363 of the Penal Code, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped. *Neela Bibee*, W. R., X, 33.

A husband, or those who aided him, cannot be convicted of kidnapping for taking away his own wife, but they are guilty of rioting if they take possession of her by force and violence and in the darkness of night. *Asken*, W. R., 1864, 12.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Kidnapping, Forcible Abduction, Slavery, and forced Labour.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for ten years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.*	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

* Knowing a girl to be kidnapped, and then to confine her, and subsequently detain her as a slave, is to be guilty of two offences. Slavery admits of degrees, and a person is treated as a slave if another asserts to an absolute right to restrain his personal liberty and to dispose of his labour against his will. *Mirza Sekunder Bukht*, N.-W. P., 20th June 1870.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Kidnapping, Forcible Abduction, Slavery, and forced Labour.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, and fine.	Court of Session.
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
372	Selling or letting to hire a minor for the purpose of prostitution (*a*).	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.

(*a*). If when dedicating Sundri to the temple, A knew it to be likely that the child would be used for the purpose of prostitution—and the evidence on this point is far too strong to admit of a doubt—besides which, her own admissions, when under examination before the Magistrate, are a complete bar to any plea of ignorance on that score being set up, it is not essential that she should have given up present possession of the child in order to render herself amenable to the law. By her dedication to the temple the child was doomed to be a Bhavin, and in all likelihood a prostitute for life, and this is a disposal of the child, which by the law is made a penal offence. *Jails, Bom. Rep.*, VI., 64.

means, induces any person to go from any place, is said to abduct that person.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished as by schedule on page 548.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished as by schedule on page 548.

Illustration.

(*a.*) A kidnaps Z from British India, intending, or knowing it to be likely, that Z may be sacrified to an idol. A has committed the offence defined in this Section.

(*b.*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this Section.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished as by schedule on page 548.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished as by schedule on page 549.

367. Whoever kidnaps or abducts any person, in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished as by schedule on page 549.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished as by schedule on page 549 (*a*).

(*a.*) Section 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers. *Sheikh Ooyeer*, W. R., VI, 17.

369. Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished as by schedule on page 549.

370. Whoever imports, exports, removes, buys, sells, or disposes of, any person as a slave, or accepts, receives, or detains against his will, any person as a slave, shall be punished as by schedule on opposite page.

A Sessions Judge cannot refuse to try a commitment under the Section because he holds that there cannot be slavery in British India; he must try and can afterwards decide according to the evidence before him. *Firman Ali*, S. W. R., XVI, 73.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished as by schedule on opposite page.

372. Whoever sells, lets to hire, or otherwise disposes of, any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished as by schedule on opposite page.

373. Whoever buys, hires or otherwise obtains possession of any minor under the age of sixteen years, with intent that

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Kidnapping, Forcible Abduction, Slavery, and forced Labour.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
373	Buying or obtaining possession of a minor for the same purpose.	May arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for ten years, and fine.	Court of Session or Magistrate of the first class.
374	Unlawful compulsory labour (*a*).	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Any Magistrate.
	Of Rape.					
376	Rape	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine; *if a second conviction, whipping may be given in addition* (*b*).	Court of Session.

Of Unnatural Offences.

377	Unnatural offences ...	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine; *if a second conviction, whipping may be given in addition* (*c*).	Court of Session.

(*a*.) The Police are to be carefully instructed that whoever seizes coolies, or compels coolies to work against their will, is guilty of a breach of the law, and commits an offence for which arrest may be made without warrant.

2. The Police will, in future, give immediate attention to every complaint made to them of such an offence. When coolies have been seized, they will immediately release them, reporting the offenders on ordinary occasions to the Magistrate; but in aggravated cases, when the aggressor offers resistance, or has used extreme violence, or refuses to release the parties upon whom he has laid hands, the Police are authorized to arrest and forward him for trial under Section 341 or 374 of the Penal Code, as the case may be.

3. The Police are also to be instructed that this prohibition applies equally to Government servants as to non-officials; and that no Constables, Chupprassee, Licensed Labor Agent, or other employé of the Government, has any authority whatever to impress coolies or to compel labor.

4. At the same time, the Police must be taught that it is one of their duties, and not the least important, to show every possible civility and attention to all classes of travellers, both European and Native; to give them every information in their power; to point out to them where coolies, carriage and supplies are to be procured; and to render all the aid they are able legitimately to afford to persons in trouble or distress, from any of the accidents incidental to travelling. *Cen. Prov. Pol. Cir.* 18 *of* 1863.

(*b*.) Whipping cannot be administered to a person sentenced for five years or upwards.

(*c*.) Whipping never to be given to females or to persons sentenced to imprisonment for more than five years—VI, 1864.

such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished as by schedule on page 552.

374. Whoever unlawfully compels any person to labor against the will of that person, shall be punished as by schedule on page 552.

375. A man is said to commit "rape," who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married.

Fifthly.—With or without her consent, when she is under ten years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape (*a*).

(*a*.) Sexual intercourse by a man with a woman without her free consent—*i. e.*, a consent obtained without putting her in fear of injury,—amounts to rape; and the Judge should leave the question to the Jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory. *Akbar Kajee*, W. R., 1 Cr., 21.

Held to be physically impossible that a girl of tender age should be killed by rape and not show any external signs of violence. *Banee Madhub Mookerjee*, W. R., I, 29.

The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female. *Jhantah Noshyo*, W. R., VI, 59.

376. Whoever commits rape shall be punished as by schedule on page 552.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished as by schedule on page 553.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section.

CHAPTER XVII.

OFFENCES AGAINST PROPERTY.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move

everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a.*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(*b.*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonstly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c.*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d.*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e.*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here, the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f.*) A finds a ring belonging to Z on a table in the house which Z occupies. Here, the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g.*) A finds a ring lying on the highroad, not in the possession of any person. A by taking it commits no theft, though he may commit criminal misappropriation of property.

(*h.*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately, for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding-place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i.*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt, for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not dishonestly.

(*j.*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k.*) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft though the watch is his own property, inasmuch as he takes it dishonestly.

(*l.*) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n.*) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here, it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.

Of Theft.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
379	Theft (*a*)	May arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for three years, or fine, or both, *or with whipping, in lieu of them, if for a first conviction; in addition to them, if for a second conviction* (*b*).	Any Magistrate.
380	Theft in a building, tent, or vessel.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine, *or* with whipping, *in lieu of them, if for a first conviction; in addition to them, if for a second conviction* (*c*).	Ditto.

381	Theft by clerk or servant of property in possession of master or employer (*c*).	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Session, or Magistrate of the first or second class.

(*a*.) The accused was convicted of theft, "in having dishonestly taken from the possession of her husband, Sheik Ismael, certain property, consisting of wearing apparel, ornaments and household articles, of the value of Rs. 175 or thereabouts," and sentenced to rigorous imprisonment for nine months. The act admitted by the accused woman amounts to abetment of theft, and, under Section 114 of the Indian Penal Code, she may be deemed to have committed theft. The female in question was a Mahammadan, and consequently there was not between her and her husband the same union of interest which exists between an English husband and wife (*vide* Baillie's Digest of the Mahammadan Law, Introduction, xxiv, and p. 145); and among the list of the articles removed with the abetment of the wife there are some which under that law would be recognised as the exclusive property of the husband. *Khatabhai, Bom. VI*, 9.

Theft by constables of property from the house they were employed to guard is punishable under Section 380, and not Section 409, Penal Code. *Boidonath Singh*, W. R., III, 29.

A person can be convicted of abetment of theft under the first explanation of Section 107 of the Indian Penal Code only if he either procure, or attempts to procure, the commission of the theft. Mere subsequent knowledge of the offence is insufficient. *Shumeeruddeen*, W. R., II, 40.

A person acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it. *Ram Churn Singh*, W. R., VII, 57.

The prisoner acting *bonâ fide* in the interest of his employers, and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the order of his employers. *Held* that the prisoner was not guilty of theft. *Nobeen Chunder Holdar*, W. R., VI, 79.

The mere assertion of a fair claim of property, or right on the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be *proved* by evidence to be fair and good. *Nazib Chowdhry*, S. W. R., XV, 47.

It is not theft when one joint proprietor takes into his own sole possession property belonging to himself and his co-proprietors which had previously been in their joint possession. *Allah Bux*, S. W. R., XV, 51.

A syce making away with horse entrusted to him by his master is guilty under Section 381, and may be arrested without warrant. Section 408 does not apply. *Jud. Com. Pan., Pol. Cir.* III *of* 1867.

(*b*.) Whipping never to be given to females or to persons sentenced to imprisonment for more than five years. Act VI, 1864.

(*c*.) The prisoners were charged with having stolen a sum of money shut up in a box and placed in the Police Treasury buildings, over which they, as burkundauzes, were placed in guard. *Held* that the charge should have been made under Section 381 of the Penal Code (theft by servant in possession of property), and not under Section 409 (criminal breach of trust by public servant). *Juggurnath Singh*, W. R., II, 55.

A hired boatman does not come within the definition of a clerk or servant under Section 381 of the Penal Code. Theft by such a person on board a boat comes under Section 380. *Bawool Manjee*, W. R., VIII, 32.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Theft.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	May arrest without warrant.	Warrant ...	Not bailable	Rigorous imprisonment for ten years, and fine, *or with whipping in lieu of the above, if for a first; in addition to the above, if for a second conviction* (*a*).	Court of Session.
			Of Extortion.			
384	Extortion ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

(*a*.) Whipping never to be given to females or to persons sentenced to imprisonment for more than five years. Act VI, 1864.

(*o.*) A is the paramour of Z's wife. She gives A valuable property which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p.*) A in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here as A does not take dishonestly, he does not commit theft.

379. Whoever commits theft shall be punished as by schedule on page 556.

380. Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished as by schedule on page 556.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished as by schedule on page 557.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished as by schedule on opposite page.

Illustrations.

(*a.*) A commits theft on property in Z's possession; and while committing this theft he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this Section.

(*b.*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this Section.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion."

Illustrations.

(*a.*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money; he thus induces Z to give him money. A has committed extortion.

(*b.*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note, binding Z to pay certain monies to A: Z signs and delivers the note. A has committed extortion.

(*c.*) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d.*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign, or affix his seal to, a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, Z has committed extortion.

(*See note b on p.* 561.)

384. Whoever commits extortion shall be punished as by schedule on opposite page.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished as by schedule on page 560.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished as by schedule on page 560.

387. Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of death or of grievous hurt to that person or to any other, shall be punished as by schedule on page 560.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Extortion. —(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.
388	Extortion by threat of accusation of an offence* punishable with death, transportation for life, or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine, *or with whipping in lieu of the above, if for a first; in addition to the above, if for a second conviction* (*a*).	Ditto.

	If the offence threatened be an unnatural offence.*	Ditto ...	Ditto ...	Bailable ...	Transportation for life.	Ditto.
389	Putting person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for ten years, in order to commit extortion (*b*).	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for ten years, and fine.	Ditto.
	If the offence be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life	Ditto.
	Of Robbery and Dacoity.					
392	Robbery (*c*)	May arrest without warrant.	Warrant ...	Not bailable.	Rigorous imprisonment for ten years, and fine; *if a second conviction, whipping may be given in addition* (*a*).	Court of Session, or Magistrate of the first class.

* See Note *, S. 187.

(*a*.) Whipping never to be administered to females or to persons sentenced to imprisonment for five years or upwards.

(*b*.) The terror of a criminal charge is a fear of injury within the meaning of these words in Section 383 of the Penal Code. Extortion may be equally committed whether the charge threatened is true or false. *Mobarick*, W. R., VII, 28.

Held that it is not necessary, in a case of extortion, under the Indian Penal Code, that the threat should be used, and the property received by one and the same individual; nor that the receiver should be charged with abetment, although that might be done. *Shoukar Bhogvatetal*, 2 Bom. Rep., 417.

(*c*). When a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion. *Dabelooddeen Sheikh*, W. R., V, 19.

When in committing a theft there is an intention and an attempt to cause hurt, the offence is robbery. *Teekai Bheer*, W. R., V, 95.

Theft with violence is robbery. A conviction, under Section 397 of the Penal Code, of using a deadly weapon whilst engaged in the commission of robbery or dacoity, is equally good whether the number of thieves be five or under. *Dwarka Aheer*, W. R., II, 49.

A person convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property. *Sheikh Muddun Ally*, W. R., 1864, Cr., 27.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—(*Continued.*)

Of Robbery and Dacoity.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If committed on the highway between sunset and sunrise.	May arrest without warrant.	Warrant ...	Not bailable.	Rigorous imprisonment for fourteen years, and fine.	Court of Session, or Magistrate of the first class.
393	Attempt to commit robbery	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for seven years, and fine; *if a second conviction, whipping may be given in addition* (*a*).	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for ten years, and fine; *if a second conviction, whipping may be given in addition* (*a*).	Ditto.

(*a*.) Whipping never to be administered to females or to persons sentenced to imprisonment for five years and upwards.

388. Whoever commits extortion by putting any person in fear of an accusation against that person, or any other, of having committed, or attempted to commit, any offence* punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence,* shall be punished as by schedule on page 560; and if the offence be one punishable under Section 377, as by schedule on page 561.

389. Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of an accusation against that person, or any other, of having committed, or attempted to commit, any offence* punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished as by schedule on page 561; and if the offence be one punishable under Section 377, as by schedule on page 561.

390. In all robbery there is either theft or extortion.

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a.*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b.*) A meets Z on the highroad, shows a pistol, and demands Z's purse. Z in consequence surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt; and being at the time of committing the extortion in his presence, A has therefore committed robbery.

(*c.*) A meets Z and Z's child on the highroad. A takes the child and threatens to fling it down a precipice unless Z delivers his purse. Z in consequence delivers his purse. Here A has extorted the purse from Z by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d.*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand Rupees." This is extortion and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

391. When five or more persons conjointly commit or attempt a robbery, or where the whole number of persons conjointly committing, or attempting to commit, a robbery, and persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting or aiding is said to commit "dacoity."

392. Whoever commits robbery shall be punished as by schedule on page 561; and if robbery be committed on the highway between sunset and sunrise, as by schedule on page 562.

393. Whoever attempts to commit robbery shall be punished as by schedule on page 562.

394. If any person, in committing, or attempting to commit,

* See Note *, S. 187.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Robbery and Dacoity—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
395	Dacoity (*a*)	May arrest without warrant.	Warrant ...	Not bailable..	Transportation for life, or rigorous imprisonment for ten years, and fine; *if a second conviction, whipping may be given in addition* (*b*).	Court of Session.
396	Murder in Dacoity ...	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for ten years, and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than seven years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon (*c*).	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

399	Making preparation to commit dacoity.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for ten years, and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts (*d*).	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for seven years, and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

(*a*.) When persons are found within six hours of the commission of a dacoity, with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers. *Cassy Mul*, W. R., 10.

The definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law. *Khoyrat Ally Beg*, W. R., III, 60.

When a prisoner is apprehended eight days after the commission of a dacoity, with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form. *Motee Jolaha*, W. R., V, 66.

When stolen property is found in the possession of the dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other,—*e. g.*, length of time or distance. *Abdul Hussein*, I, 48.

A sentence of 14 years' imprisonment cannot be awarded for dacoity. *Haroo Rujwar*, S. W. R., XIII, 27.

A person convicted under this section cannot be convicted also under S. 411 or 412, when there is no evidence of the commission of more than one offence. *Shahabut Sheikh*, S. W. R., XIII, 43.

(*b*.) Whipping never administered to females or to persons sentenced to imprisonment for five years and upwards.

(*c*.) There cannot be an attempt to commit dacoity, because an attempt to commit robbery when made by five or more persons constitutes dacoity.

(*d*.) A Judicial Officer should convict a burwar under Section 401 of the Penal Code only when the circumstances are such as to warrant the presumption that he belongs to a gang associated for the purpose of committing theft or robbery. The mere fact that a burwar had disobeyed the provisions of Police Circular No. 57-21 would not be sufficient to justify that presumption. *Oudh Pol. Cir.* 28-17 of 1869.

robbery, voluntarily causes hurt, such person and any other person jointly concerned in committing, or attempting to commit, such robbery, shall be punished as by schedule on page 563.

395. Whoever commits dacoity shall be punished as by schedule on page 564 (*a*).

(*a*.) When a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance does not take that offence out of the purview of Section 395 of the Penal Code. It is sufficient, for the application of the section, that the robbers cause, or attempt to cause, the fear of instant hurt or of instant wrongful restraint. *Kissoree Pater*, W. R., VII, 35.

Section 511 of the Penal Code does not apply in a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under Section 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out Sections 397 and 511, and substituting Section 395. *Koonee*, W. R., VII, 48.

A person convicted of, and sentenced for, dacoity cannot also be convicted of a sentence for receiving or retaining the stolen property thereby acquired (*dissentiente* Loch, J.). *Koobeer Chung*, W. R., 1864, 27.

If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under Section 396 of the Penal Code. But he cannot be separately convicted of murder under Section 302 and of committing dacoity under Section 395. *Rughoo*, W. R., 1864, 30.

Five men armed were discovered committing an act of housebreaking by night. One of the parties was engaged in cutting a hole through the wall while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers: *Held* that the crime of which they were guilty was housebreaking by night, and not dacoity. *Rewut Rajwar*, W. R., 1864, 39.

The evidence of an appprover, for whose appearance at the trial there was not the slightest reason, and the mere fact that, in the houses of each of the four prisoners, only one article of the stolen property was found, was held insufficient, under the circumstances of this case, where the best witnesses were not examined, to support a conviction of the prisoner on a charge of dacoity. *Sagor*, W. R., VIII, 57.

A sentence of fine only is illegal in a case of dacoity. *Bhojah*, W. R., VI, 54.

In a case of dacoity, a sentence of 14 years' transportation was held illegal and reduced to 10 years' transportation under Section 395 of the Penal Code. *Ramchand Punjah*, W. R., VI, 88.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished as by schedule on page 564.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished as by schedule on page 564.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, he shall be punished as by schedule on page 564.

399. Whoever makes any preparation for committing dacoity shall be punished as by schedule on page 565.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished as by schedule on page 565.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished as by schedule on page 565.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished as by schedule on page 565.

403. Whoever dishonestly misappropriates, or converts to his own use, any moveable property, shall be punished as by schedule on page 568.

*Illustrations.**

(*a.*) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this Section.

(*b.*) A, being on friendly terms with Z, goes into Z's library in Z's absence and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this Section.

(*c.*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this Section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this Section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this Section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations.

(*a.*) A finds a rupee on the highroad not knowing to whom the rupee belongs, A picks up the rupee. Here, A has not committed the offence defined in this Section.

(*b.*) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs: he appropriates the note. He is guilty of an offence under this Section.

(*c.*) A finds a cheque payable to bearer; he can form no conjecture as to the person who has lost the cheque, but the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favor the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this Section.

(*d.*) A sees Z drop his purse with money in it. A picks up the purse with intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this Section.

(*e.*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this Section.

(*f.*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this Section (*a*).

(*a.*) To bring a prisoner within Section 403 of the Penal Code, there must be actual conversion of the thing appropriated to the

* See *Shamsoondur*, Sec. 417, N.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Criminal Misappropriation of Property.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first or second class.
	If by clerk or person employed by deceased.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

prisoner's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of criminal misappropriation under the Section referred to. *Abdool*, W. R., X, 23.

The mere fact that the prosecutor gave the prisoner time to make out his accounts and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only. *In re Sreekant Biswas*, W. R., V, 56.

A, dishonestly misappropriates money entrusted to him before B's decease, but does not bring such money to his own use. A has committed an offence under Section 404. *Enayat Hossein*, W. R., XI, 1.

A, retains in his hand money which he was authorized to collect from the debtor of his master B, because money was due to him as wages. A has committed criminal misappropriation. *Bissesur Roy*, W. R., XI, 51.

The misappropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form subject of a separate inquiry. The duty of a committing officer is in such a case to select certain distinct items, to frame his charges upon them, and to adduce evidence especially upon those items. *Chetter*, S. W. R., XV, 5.

404. Whoever dishonestly misappropriates, or converts to his own use, property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished as by schedule on opposite page; and if the offender at the time of such person's decease was employed by him as clerk or servant, as by schedule on opposite page.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this Section.

405. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made, touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(*a.*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b.*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c.*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lac of Rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(*d.*) But if A, in the last illustration, not dishonestly, but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e.*) A, a revenue officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Criminal Breach of Trust.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
406	Criminal breach of trust (*a*)	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first or second class.
409	Criminal breach of trust by public servant (*b*), or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant...	Not bailable.	Imprisonment of either description for three years, or fine, or both; *or with whipping in lieu of the above, if for a first; in addition to the above, if for a second conviction* (c).	Court of Session, or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for ten years, and fine; *or with whipping in lieu of the above, if for a first; in addition to the above, if for a second conviction.*	Court of Session.

(a.) A is agent to a landholder, and as such it is his duty to keep the collections made on his master's behalf separate from his own moneys, to expend from his master's moneys what is really due from them on his master's account, and then to hand over the balance. But he converts the money to his own use. A has committed criminal breach of trust.

Again, A is allowed to mix his moneys with those of his master's; he applies the money so collected to his own use fraudulently and *dishonestly*, and falsifies the accounts to conceal his fraud. He is guilty of criminal breach of trust.

Again, A allowed to mix the two different moneys; converts such moneys to his own use not fraudulently nor dishonestly (of this the keeping a correct account would be evidence). A has committed no offence, he can only be proceeded against in the Revenue Court. *Karem Bux, 7th February* 1871.

Unless there is proof that property is stolen property, the possessor of it cannot be convicted under Section 411.—*Buldeo Pershad, 13th May* 1870.

(b.) This section does not limit the mode in which trust arises, whether by specific order, or by reason of its being part of the proper duty of a public functionary; where therefore it was proved that the head clerk of an office entrusted the management of stamps with the knowledge and sanction of his superiors to one of his assistants, and the latter made away with the stamps, he was guilty under this section. *Ram Dhun Dey*, S. W. R., XIII, 77.

(c.) Whipping never to be administered to females or to persons sentenced to imprisonment for more than five years.

(*f.*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.*

406. Whoever commits criminal breach of trust shall be punished as by schedule on page 570.

407. Whoever, being entrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished as by schedule on page 570.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished as by schedule on page 570.†

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant,* or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished as by schedule on page 570 (*a*).

(*a.*) The mere fact of there being a large deficit of salt, without distinct proof of criminal misappropriation, is not sufficient to convict the Salt Darogah in charge of the golahs of criminal breach of trust under Section 409 of the Penal Code. *Brinbadhur Putnaik*, W. R., V, 21.

A Nazir is the head of an important department, and must be responsible for the truth of what he reports or admits. He cannot be permitted to avoid responsibility by urging that his mohurrir deceived him. *Tofuzzal Aly*, W. R., VII, 109.

Where a Court Inspector improperly delegated to a Constable the custody, &c., of Government moneys (taking from him private security to save himself from loss in case of defalcation), and the Constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under Section 408, and not Section 409, of the Penal Code, and the sentence reduced from 10 years' transportation and a fine of Rs. 500 to one year's rigorous imprisonment without fine. *Banee Madhub Ghose*, W. R., VIII, 1.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property, which

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* A refusal to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under Section 405 of the Penal Code. *Joffer Naik*, 2 Bom. Rep., 133.

† A servant who receives money for a specific purpose, and does not use it for that purpose, and on being called on to account for the money, falsely says that he used it for that purpose, is guilty of criminal breach of trust under Section 408 of the Penal Code. *Golab Khan*, W. R., X, 281.

The accused was convicted of criminal breach of trust in respect of the value of goods which had been entrusted to him to sell. It was urged before the High Court that the conviction could not be sustained, as the accused was a partner with the prosecutor.

Held, by Jackson, J., that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was not a partner, but a servant; that such finding could not be interfered with by the High Court as a Court of Revision, unless there was a mistake in law; that the finding was correct in law; that the defence of the prisoner could not be taken to mean to say that he was a partner, but merely that he claimed a small share in the profits, and that such claim did not make him a partner, an agent's remuneration being a share in the profits not constituting the agent a partner.

Held, by Kemp and Mitter, JJ. (releasing the prisoner), that, though the allowance of a portion of the profits or goods does not destroy the relation of master and servant, the accused in this case distinctly pleaded he was a partner, and not only that he was entitled to a share in the profits; that the Lower Courts did not specifically decide that the accused was a servant; and that the prosecutor's remedy was a civil suit for an account. *Lall Chund Roy*, W. R., IX, 37.

* A Naib Nazir is a public servant and not the mere private servant of the Nazir. *Mahomed Hussein*, N.-W. P., 18-7-70.

The making away with property of which a person has been put in lawful possession by superior authority is not theft, but criminal breach of trust. *Bharut Chunder Christian*, W. R., I, 2.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of the Receiving of Stolen Property.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
413	Habitually dealing in stolen property.	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine; *if a second conviction, whipping may be given in addition* (*a*).	Court of Session.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

(*a*.) Whipping never administered to females nor to persons sentenced to imprisonment for five years and upwards.

has been criminally misappropriated, or in respect of which the offence of criminal breach of trust has been committed, is designated as "stolen property." But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Whoever dishonestly receives or retains* any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished as by schedule on page 571.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows, or has reason to believe, to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows, or has reason to believe, to belong, or to have belonged, to a gang of dacoits, property which he knows, or has reason to believe, to have been stolen, shall be punished as by schedule on page 571.

413. Whoever habitually receives or deals in property which he knows, or has reason to believe, to be stolen property, shall be punished as by schedule on page 573.

414. Whoever voluntarily assists in concealing, or disposing of, or making away with, property, which he knows, or has reason to believe, to be stolen property, shall be punished as by schedule on page 573.

* A prisoner cannot be convicted under this Section for dishonestly receiving, &c., stolen property, in respect of which property he himself has already been convicted under Section 409. *Shunker*, N.-W. P., 5-8-70.

The Central Provinces Police are warned not to send persons up under this Section, when a little more careful investigation would have shown that the offence committed falls really under theft or housebreaking.

Unless there is proof that property is stolen property, the possessor of it cannot be convicted under Section 411. *Buldeo Pershad*, N.-W. P., H. C., dated 13-5-70.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do, or omit to do, anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person, in body, mind, reputation, or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this Section.

Illustrations.

(*a.*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b.*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c.*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d.*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e.*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f.*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly

induces Z to lend him money, A not intending to repay it. A cheats.

(*g*.) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats. But if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*.) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i*.) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. A person is said to "cheat by personation," if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

*Illustrations.**

(*a*.) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*.) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

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* A by mistake gave to B, a railway booking clerk, Rs. 17, instead of 17 pice, by mistake, in payment for a ticket. B kept the rupees. B was not guilty of cheating, but of an offence under Section 403. *Sham Soonder*. N.-W. P., 17-12-70.

To induce a son to pay his father's debts by acting merely on his fear of consequences to his father, is not cheating. To describe those consequences as more serious than they were likely to be, may be to deceive, but is not cheating, if done without any fraudulent or dishonest intention. *Queen* v. *Rajcoomar Banerjee*, W. R., Cr., 25.

Where a person represented a girl to be the daughter of one woman, when she was within his knowledge the daughter of another woman, *Held* that he was guilty of cheating by personation under Section 416 of the Penal Code, and that it was unnecessary to bring in Section 109 relating to abetment. *Queen* v. *Dhunput Ojhah*, 7 W. R., Cr., 51.

Where two girls were bought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of a much higher caste than they really were, and married to two Rajpoots, after receiving the usual bonus: *Held* that the prisoners could not be convicted under Section 373 of the Penal Code, but of cheating and false personation under Sections 415 and 416. *Queen* v. *Dabee Singh and others*, 7 W. R., Cr., 55.

Before convicting of cheating, the Court will require to be convinced of dishonest intent at the time of taking the money. *Heeramun Hulwye, Appellant*, 1 Ind. Jur., 97.

The mere taking money one day and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention. *Queen* v. *Heeramun Hulwye*, 5 W. R., Cr., 5.

The act which the accused is proved to have committed, namely, entry to the exhibition building without a ticket, was undoubtedly of a fraudulent character, but it does not seem to come within the definition of any offence declared penal by the Indian Penal Code or any other law. It does not come within the definition of cheating as given in Section 415, as it does not appear that the accused by deceiving any person intentionally induced the person so deceived to do, or omit to do, anything which he would not have done, or omitted to do, if he had not been so deceived; nor does it amount to criminal trespass, as it cannot be said that the accused entered upon any property with intent to commit an offence, or to intimidate, insult or annoy any person in possession of such property. The accused might have been proceeded against by

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—(*Continued.*)

Of Cheating.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
417	Cheating (*a*)	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
419	Cheating by personation ...	Ditto ...	Ditto ...	Ditto ...	Ditto.	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.

Of Fraudulent Deeds and Dispositions of Property.

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ..	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

(*a.*) A, knowing there is to be no wedding, hires from B. certain property saying, that it is to be used at a wedding, and agreeing to pay for its hire, and to return the property after the wedding was over, but really intending when he got the property to apply for its attachment by Civil Court on an alleged claim. A is guilty of cheating. *Kadir Bux*, 13*th January* 1871.

A, promising to return certain jewels pledged to him, but not intending to do so accepts a Government promissory note from B and then claims to retain on account of another debt alleged to be due to him from B. A has committed cheating. *Sheoduram Day*, 13*th January* 1871.

417. Whoever cheats shall be punished as by schedule on page 576.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law, or by a legal contract, to protect, shall be punished as by schedule on page 576.

419. Whoever cheats by personation shall be punished as by schedule on page 576.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished as by schedule on page 576.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred, to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished as by schedule on page 577.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available, according to law, for payment of his debts or the debts of such other person, shall be punished as by schedule on page 577.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished as by schedule on page 577.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished as by schedule on page 577.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a.*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b.*) A introduces water into an ice house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

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the Committee of the Exhibition in the Civil Courts for a trespass, and he might have been compelled to pay damages; but we have been unable to discover any law under which he could be punished criminally for this act. Bom. H. C. Rep., *Vishvanath Narayan Mundlak.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Mischief.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
426	Mischief	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless, any animal of the value of 10 rupees or upwards	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

(*c.*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d.*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e.*) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(*f.*) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g.*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h.*) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief (*a*).

(*a.*) The right to a fishery was in dispute between the zemindar of Bally and the zemindar of Maharajpore. The former obtained a decree in the Civil Court, declaring the fishery to be his, in proceedings to which the latter was not a party; and the servants of the Bally zemindar thereupon removed a bamboo bar, which the Maharajpore people had erected to prevent the passage of fish. For this they were convicted of mischief under the Indian Penal Code and punished by fine.

Held, on reference to the High Court, that the conviction could not stand, as the Maharajpore zemindar had not shown that he was legally entitled to the fishery, and as it did not appear that the defendants were acting otherwise than from a *bonâ fide* belief that the Maharajpore zemindar was encroaching on their master's rights. *Dinobundhu Biswas*, 3 B. L. R., Cr., 17; S. C., 12 W. R., Cr., 1.

The authority vested in the Criminal Court of punishing persons for acts of mischief, is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of Section 425 of the Penal Code. *Ram Gholam Singh*, W. R., VI, 59.

Section 425 of the Penal Code supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and Section 17, Act III of 1857 (new Act I of 1871) supposes the mischief (cattle-trespass) was done intentionally, and not by negligence. *Arag Sircra*, W. R., X, 29.

A man must, in some way, cause cattle to enter the prosecutor's fields, knowing that by so doing he is likely to cause damage, or he will not be liable for damage done under Section 426. Mere neglect to keep the cattle from straying is not enough. *Major Forbes* v. *Grish Chunder Bhuttacharjee*, S. W. R., XIV, 30.

426. Whoever commits mischief shall be punished as by schedule on page 579.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty Rupees or upwards, shall be punished as by schedule on page 579.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any animal or animals of the value of ten Rupees or upwards, shall be punished as by schedule on page 579.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty Rupees or upwards, shall be punished as by schedule on page 579.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals, which are property, or for cleanliness, or for carrying on any manufacture, shall be punished as by schedule on opposite page.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river or navigable channel, natural or

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Mischief.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for five years, or fine, or both.	Court of Session or Magistrate of the first or second class.
431	Mischief by injury to public road, bridge, river, or navigable channel, and rendering it impassable or less safe for travelling, or conveying property.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, or fine, or both.	Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Mischief.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
435	Mischief by fire or explosive substance, with intent to cause damage to amount of 100 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Court of Session.
436	Mischief by fire or explosive substance, with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.

438	The mischief described in the last section, when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass ...	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.
448	House-trespass ...	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable.	Transportation for life, or rigorous imprisonment for ten years, and fine.	Court of Session.

artificial, impassable, or less safe for travelling or conveying property, shall be punished as by schedule on page 581.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished as by schedule on page 581.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a seamark, or any seamark or buoy, or other thing placed as a guide for navigators, or by any act which renders any such light-house, seamark, buoy, or other such thing as aforesaid, less useful as a guide for navigators, shall be punished as by schedule on page 581.

434. Whoever commits mischief by destroying or moving any landmark fixed by the authority of a public servant, or by any act which renders such landmark less useful as such, shall be punished as by schedule on page 582.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any propery to the amount of hundred Rupees or upwards, shall be punished as by schedule on page 582.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished as by schedule on page 582.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy, or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished as by schedule on page 582.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding Section, shall be punished as by schedule on page 583.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished as by schedule on page 583.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished as by schedule on page 583.

441. Whoever enters into or upon property in the possession of another, with intent to commit an offence* or to intimidate, insult, or annoy (*a*) any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to commit an offence,* is said to commit criminal trespass.

(*a.*) Annoyance must be understood in the ordinary sense of the term, nothing less. One member of a joint family commits no trespass by entering the house which forms the joint property of the family, but he is guilty of that offence if he enters the room ordinarily occupied by another member of the family. *Prankisto Chunder*, S. W. R., XV, 6.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel, used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering, sufficient to constitute house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building,

* See Note *, S. 141.

tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

445. A person is said to commit "house-breaking," who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence,* or having committed an offence* therein, he quits the house or any part of it in any of such six ways, that is to say,—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence,* for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

* See Note * Section 187.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this Section.

Illustrations.

(*a.*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b.*) A commits house-trespass by creeping into a ship, at a port-hole between decks. This is house-breaking.

(*c.*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d.*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e.*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f.*) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g.*) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h.*) Z the door-keeper of Y is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Criminal Trespass.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	May arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for ten years, and fine.	Court of Session.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, and fine.	Any Magistrate.
	If the offence is theft ...	Ditto ...	Ditto ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

453	Lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, and fine.	Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine; *or if the offence be one under sections 388, 389, 411, 412, with whipping in lieu of the above, if a first; and in addition, if a second conviction under sections 193, 194, 195, 211 + 377, 354, 375, 377, 392, 393, 394, 395, 413, 463, 466, 467, 468, 469* (*a*).	Court of Session, or Magistrate of the first or second class.
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for ten years, and fine; *if the offence be one under sections 379, 380, 381, 382, with whipping in lieu of the above if a first, and in addition if a second, conviction.*	Ditto.

(*a*.) Whipping never to be administered to females or persons sentenced to imprisonment of five years and upwards.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—*(Continued.)*

Of Criminal Trespass.—(Continued.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
455	Lurking house-trespass or house-breaking, after preparation made for causing hurt, assault, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years, and fine; *or if the offence be one under sections 388, 389, 411, 412, with whipping in lieu of the above if for a first; and in addition if for a second*	Ditto.

					conviction under sections 193, 194, 195, 211 + 377, 354, 375, 377, 392, 393, 394, 395, 413, 463, 466, 467, 468, 469 (a).	
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for fourteen years, and fine; *if the offence be one under sections 379—382, with whipping in lieu of the above for a first, and in addition for a second, conviction.*	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for fourteen years, and fine.	Court of Session, or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.

(a.) Whipping can never be administered to a female or to persons sentenced to imprisonment of five years and upwards.

447. Whoever commits criminal trespass* shall be punished as by schedule on page 583 (*a*).

(*a*.) *Held* that a suit for the closing of a door on account of apprehended trespass will not lie. . *Seeta Ram*, 2 Agra Rep., A. C., 19.

448. Whoever commits house-trespass shall be punished as by schedule on page 583.

449. Whoever commits house-trespass, in order to the committing of any offence punishable with death, shall be punished as by schedule on page 583.

450. Whoever commits house-trespass, in order to the committing of any offence punishable with transportation for life, shall be punished as by schedule on page 586.

451. Whoever commits house-trespass, in order to the committing of any offence punishable with imprisonment, shall be punished as by schedule on page 586; and if the offence intended to be committed is theft, as by schedule on page 586.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished as by schedule on page 586 (*b*).

(*b*.) Where A goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass by putting such person in fear of wrongful restraint under Section 452 of the Penal Code. *Nundmohun Sircar*, W. R., XI, 33.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished as by schedule on page 587.

454. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished as by schedule on page 587; and if the offence intended to be committed is theft, as by schedule on page 587.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault, or of wrongful restraint, shall be punished as by schedule on page 588.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished as by schedule on page 588.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished as by schedule on page 588; and if the offence intended to be committed is theft, as by schedule on page 589.

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished as by schedule on page 589.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished as by schedule on page 589.

460. If at the time of the committing of lurking house-trespass by night, or house-breaking by night, any person guilty of such offence shall voluntarily cause, or attempt to cause, death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night, or house-breaking by night, shall be punished as by schedule on opposite page.

* Entrance on property in possession of B by A in the *bonâ fide* assertion of a claim of title. does not amount to criminal trespass. *Gokul Chund*, N. W. P., 11th Feby. 1870.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—*(Concluded.)*

Of Criminal Trespass.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Transportation for life or imprisonment of either description for ten years, and fine.	Court of Session.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle, which contains, or which he believes to contain, property, shall be punished as by schedule on page 591.

462. Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished as by schedule on page 591.

CHAPTER XVIII.

OFFENCES RELATING TO DOCUMENTS, &c.

463. Whoever makes any false document, or part of a document, with intent to cause damage or injury to the public, or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

464. A person is said to make a false document—

First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document, or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document, or part of a document, was made, signed, sealed, or executed by, or by the authority of, a person by whom, or by whose authority, he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not, know the contents of the document or the nature of the alteration.

Illustrations.

(*a.*) A has a letter of credit upon B for Rs 10,000, written by Z. A, in order to defraud B, adds a cypher to the Rs. 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b.*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c.*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of Rs. 10,000. A commits forgery.

(*d.*) A leaves with B, his agent, a cheque on a banker signed by A, without inserting the sum payable, and authorises B to fill up the cheque by inserting a sum not exceeding Rs. 10,000 Rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of 20,000 Rupees. B commits forgery.

(*e.*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f.*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g.*) A endorses a Government promissory note, and makes it payable to Z or his order by writing on the will the words—"Pay to Z or his order," and signing the endorsement. B dishonestly erases the words "pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h.*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i.*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j.*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k.*) A, without B's authority, writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a.*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b.*) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z and negociate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c.*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(*d.*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e.*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit and with intent to defraud his creditors; and in order to give a color to the transaction, writes a Promissory Note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negociate it. A commits forgery (*a*).

(*a.*) To constitute the offence of forgery, the simple making of a false document is sufficient. It is not necessary that the document should be published or made in the name of a really existing person.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
465	Forgery*	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both. *If a second conviction, whipping may be given in addition* (*a*).	Court of Session.
466	Forgery of a record of a Court of Justice or of a Register of births, &c., kept by a public servant.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for seven years, and fine. *If a second conviction, whipping may be given in addition* (*a*).	Ditto.

* In *Lal Gumul*, N. W. P., 10th January 1870, A to screen his own negligence altered an office report, so that it purported to throw responsibility upon B for the loss of part of it. A has not committed forgery.

(*a*.) Whipping never administered to females or persons sentenced to imprisonment for five years and upwards.

A writing, which is not legal evidence of the matter expressed, may yet be a document within the meaning of Section 29 of the Penal Code, if the parties framing it believed it to be, and intended it to be, evidence of such matter. *The Queen* v. *Shifait Aly*, 2 B. L. R., A. Cr., 12; 10 W R., Cr., 61.

A specially registered bond was presented before the Small Cause Court Judge for execution under Section 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently, the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence, or making further enquiry, set aside the decree, and sanctioned the prosecution under Section 170 of the Criminal Procedure Code. *Held* that he was justified in sanctioning the prosecution, but not in setting aside the decree. *The Queen* v. *Nawab Singh*, 3 B. L. R., A. Cr., 9.

The forgery of a copy of a document comes within the definition of forgery as contained in Section 463 of the Penal Code. *Essan Chunder Dutt* v. *Prannath Chowdhry*, W. R., F. B., 171.

The signing of a vakalutnamah in the name of co-decree-holders, without their authority to do so, and delivering it to a vakeel, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of Section 463 of the Penal Code. *Queen* v. *Gyan-e Ram*, 6 W. R., Cr., 78.

A attaches his name to a mooktearnamah signifying his acceptance of it; such consent does not thereby become a forgery if the mooktearnamah turns out to have been forged. *Queen* v. *Burjo Barick*, 5 W. R., Cr., 70.

The offence of uttering forged documents requires in this country to be punished with the severest punishment allowed by law. *Queen* v. *Mokesh Chunder Sircar*, 3 W. R., Cr., 13.

Counterfeit seals and forged documents were found in the prisoner's possession, and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently. *Queen* v. *Kisto Soonder Deb*, 2 W. R., Cr., 5.

A Judge of a Small Cause Court may enquire into a charge that a decree was passed by his predecessor without the plaintiff's knowledge and on a forged document. *Queen* v. *Dinonath Gangooly*, 4 W. R., Cr., 25.

A conviction for forgery under the Penal Code cannot be had, unless it is proved that the accused himself made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made. *Queen* v. *Ramgopal Dhur*, 10 W. R., Cr., 7.

D was tried on a charge of forging, &c., a document A, and acquitted. In order to prove the charge, evidence was given in respect of another document B, which was also alleged to have been forged, and the prosecutor mainly based his case on the alleged exact resemblance between the signatures to A and B, both of which, it was said, exactly resembled a third signature admitted to be genuine: *Held*, by Peacock, C.J., and Kemp, J. (Markby, J., dissenting), that the acquittal in respect of the document A did not operate as an acquittal in respect of the document B. *Reg.* v. *Dwarka Nauth Dutt*, 2 Ind. Jur., N. S., 67; 7 W. R., Cr., 15.

In a case in which the accused was charged with dishonestly using as genuine a pottah which he knew to be forged, and in which there was a fraudulent insertion, it was held that it was not necessary to prove that he personally inserted the word, but it was sufficient if it was inserted with his knowledge. *Queen* v. *Hemoruddi*, 9 W. R., Cr., 22.

465. Whoever commits forgery shall be punished as by schedule on opposite page.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a Register of Birth, Baptism, Marriage, or Burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished as by schedule on opposite page.

467. Whoever forges a document which purports to be a valuable security, or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknow-

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine. *If a second conviction, whipping may be given in addition* (*a*).	Court of Session.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine. *If a second conviction, whipping may be given in addition* (*a*).	Ditto.

469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for three years, and fine. *If a second conviction, whipping may be given in addition* (*a*).	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery	Ditto.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable.	Ditto	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code; or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for seven years, and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

(*a*.) Whipping never administered to females or persons sentenced to imprisonment for five years and upwards.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session.
	If the document is a valuable security or will.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

ledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuble security, shall be punished as by schedule on page 596.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished as by schedule on page 596 (*a*).

(*a*). The fraudulent alteration of a Collectorate chellaun is the forgery of a document as described in Section 467 of the Penal Code. *Queen* v. *Hurish Chunder Bose*, W. R., 1864, Cr., 22.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished as by schedule on page 597.

470. A false document made wholly or in part by forgery is designated "a forged document."

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows, or has reason to believe, to be a forged document, shall be punished as by schedule on page 597 (*b*).

(*b*). A deed of divorce is a "valuable security" within the meaning of Section 30 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within Section 471 of that Code. *Queen* v. *Azimoodeen and another*, 11 W. R., Cr., 15.

The false alteration of a Police diary by a head constable was held to fall, under Section 471 of the Penal Code, as the forgery of a document made by a public servant in his official capacity. *Queen* v. *Roghoo Barick*, 11 W. R., Cr., 44.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under Section 467 of this Code, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished as by schedule on page 597.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any Section of this Chapter other than Section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished as by schedule on page 597.

474. Whoever has in possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in Section 466, be punished as by schedule on opposite page; and if the document is one of the description mentioned in Sec. 467, as by schedule on opposite page.

475. Whoever counterfeits, upon or in the substance of any material, any device or mark used for the purpose of authenticating any document described in Section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged, or thereafter to be forged, on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished as by schedule on opposite page (*a*).

(*a*.) In order to a conviction under this section, the document which the accused has in his possession must have some counterfeit device or mark upon it: it *must be proved* that the accused has the document in his possession with the intent of using such device or mark for the purpose of giving the document the appearance of authenticity. The document must be of the nature mentioned in s. 467. *Raghunandan Puttronunus*, W. R., XV, 17.

476. Whoever counterfeits upon, or in the substance of any material, any device or mark used for the purpose of authenticating any document other than the documents

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for seven years, and fine.	Ditto.
	Of Trade and Property-Marks.					
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.

483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Ditto.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

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described in Section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged, or thereafter to be forged, on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished as by schedule on page 600.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to destroy, cancel, or deface, or secretes, or attempts to secrete, any document, which is, or purports to be, a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished as by schedule on page 600.

478. A mark used for denoting that goods have been made or manufactured by a particular person, or at a particular time or place, or that they are of a particular quality, is called "a trade-mark."

479. A mark used for denoting that moveable property belongs to a particular person, is called "a property-mark."

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were not made or manufactured, or that they are of a particular quality of which they are not, is said to use a false trade-mark.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

482. Whoever uses any false trade-mark or any false property-mark, with intent to deceive or injure any person, shall be punished as by schedule on page 600.

483. Whoever, with intent to cause damage or injury to the public or to any other person, knowingly counterfeits any trade or property-mark used by any other person, shall be punished as by schedule on page 601.

484. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the same is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished as by schedule on page 601.

485. Whoever makes, or has in his possession, any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade-mark, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade-mark, with intent that the same shall be used for the purpose of denoting that any goods or merchandize were made or manufactured by any particular person or firm, by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished as by schedule on page 601.

486. Whoever sells any goods with a counterfeit property or

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.—*(Concluded.)*

Of Trade and Property-Marks.—(Concluded.)

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
488	Making use of any such false mark.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
489	Removing, destroying, or defacing, any property-mark with intent to cause injury.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for one month, or fine of one hundred rupees, or both.	Magistrate of the first or second class.

trade mark, whether public or private, affixed to or impressed upon the same or upon any case, wrapper, or receptacle, in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has deen affixed to, or impressed upon, any goods or merchandize not manufactured or made by the person, or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure, or damage any person, shall be punished as by schedule on page 601.

487. Whoever fraudulently makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished as by schedule on page 601.

488. Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be false, shall be punished as by schedule on page 603.

489. Whoever removes, destroys, or defaces any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished as by schedule on page 603.

CHAPTER XIX.

OF CRIMINAL BREACH OF CONTRACT OF SERVICE.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person, or any property, from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished as by schedule on page 603.

Illustrations.

(*a.*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this Section.

(*b.*) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this Section.

(*c.*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this Section.

(*d.*) A, by unlawful means, compels B, a cooly, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a Dâk Company to drive his carriage for a month. B employs the Dâk Company to convey him on a journey, and during the month the Company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this Section.

491. Whoever, being bound by a lawful contract to attend on, or to supply the wants of, any person who by reason of youth or of unsoundness of mind, or of a disease or bodily weakness, is helpless, or incapable of providing for his own

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.—*(Concluded.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
491	Being bound to attend on, or supply the wants of, a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for three months, or fine of two hundred rupees, or both.	Magistrate of the first or second class.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one month, or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for seven years, and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for seven years, and fine.	Ditto.

safety, or of supplying his own wants, voluntarily omits so to do, shall be punished as by schedule on page 605.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or laborer, for a period not more than three years, at any place within British India, to which by virtue of the contract he has been, or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished as by schedule on page 605.

CHAPTER XX.

OFFENCES RELATING TO MARRIAGE.

493. Any man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished as by schedule on opposite page.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished as by schedule on opposite page.

Exception.—This Section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted, of the real state of facts so far as the same are within his or her knowledge.

495. Whoever commits the offence defined in the last preceding Section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished as by schedule on opposite page (*a*).

(*a*.) A Hindu Christian convert, relapsing into Hinduism and marrying a Hindu woman, cannot be convicted of bigamy on the ground that he has another wife living, whom he married while a professing Christian. 3 Mad. Rep., A. C., 7.

A woman who does not use all reasonable means in her power to inform herself of the fact of her first husband's alleged demise, and contracts a second marriage within 16 months after cohabitation with her first husband, without disclosing the fact of the former marriage to her second husband, is liable to enhanced punishment under Section 495 of the Penal Code. *Queen* v. *Enai Beebee*, 4 W. R., Cr., 25.

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished as by schedule on opposite page (*b*).

(*b*.) Proof of dishonest or fraudulent intent is necessary for a conviction, under Section 496 of the Penal Code, of falsely going through the ceremony of marriage.

The mere allowing the marriage to take place in one's house does not amount to the abetment of an illegal marriage. *Queen* v. *Kudum*, W. R., Cr., 13.

497. Whoever has sexual intercourse with a person who is, and whom he knows, or has reason to believe, to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished as by schedule on page 608. In such case the wife shall not be punishable as an abettor.

498. Whoever takes or entices away any woman, who, is

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
497	Adultery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for five years, or fine, or both.	Court of Session.
498	Enticing, or taking away, or detaining with a criminal intent, a married woman.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.

CHAPTER XXI.—OF DEFAMATION.

500	Defamation* (*a*)	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for two years, or fine, or both.	Court of Session, or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

* A pleader or mooktyar relying upon the statements of his client, and in good faith introducing into a pleading a defamatory averment, will be protected from liability by the 9th Exception; but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith. Chrestein, N.-W. P., 16-12-70.

* There does not seem to be any presumption of *mala fides* on the defendant's part in making the charges, for he went direct to the Magistrate, and presented privately a written paper with his charges, which he said he had "heard." No doubt he was precipitate and rash, but there seems no reason to doubt that he had heard of money being offered to the boy, and the story of torture, &c., had grown possibly out of the boy's mother's alarm. There is no ground whatever for the assumption of enmity or desire to extort money on the defendant's part.

The proper course, then, was first to offer him the opportunity of retractation and to have required him to publish in his paper an account of the result of the investigation and an apology for the misstatements he had been induced to make. After that, if the Editor refused, it would have been open to the Police officers to have proposed a prosecution. Even then, such a step should not have been entered upon without the cognizance and approval of Government.

It is not only as a measure in itself inexpedient except as the last resort, but further as a measure not required till an opportunity of retraction had been offered; and finally, as a measure that should not have been taken at all without the approval of Government, that His Honor objects to the proceedings against the Editor.

Finally, the Lieutenant-Governor desires that no Press prosecution should be undertaken by any Department on account of imputations made against official acts without the express sanction of Government. N. W. P. C. O. 1326A of 1872.

Defamatory matter is privileged only when written *bonâ fide* and shown to a third party to give information which the third party ought to have. *Hackford* v. *Gulstin*, Cor. Rep., 134; S. C., Hyde's Rep., 274.

The law will infer malice where a statement is deliberately false in fact and injurious to the character of another, and the publication is not privileged. *Jacob Peter* v. *M. P. Dufour*, W. R., 1864, 92.

A report made by an officer in execution of his duty and as the result of an order from his superior, which contained sweeping imputations which did not appear from the report to be made recklessly or unjustifiably, does not amount to defamation, and is covered by Section 499, Exc. (9). *Deejobur Paul*, S. W. R., XIV., 22.

The act of filing in Court a petition containing imputations concerning a person calculated to harm his reputation, with the intent that it should be read by other persons, amounts to making or publishing the imputation within the meaning of Section 499. *J. P. Delanney*, S. W. R., XIV, 27.

Case of defamation in which the complainant admitted all the more serious charges on which he based his complaint. Conviction and sentence quashed as the gist of the offence (*viz.*, that the charge was not made in good faith) was entirely lost sight of. Compensation is not awardable in such a case. *Assaruddee Khan* v. *Baboo Khan*, 1 W. R., Cr., 6.

A simple assertion (nowhere disproved) regarding the way in which a Sheristadar had issued perwannahs in an arbitration suit, does not amount to defamation. *Queen* v. *Hem Chunder Mookerjee*, 1 W. R., Cr., 24.

A false accusation, not made in good faith, renders the party making it liable to be charged with defamation. The fact that the complainant is a man of low caste will not debar him from prosecuting for defamation on his being falsely charged with theft. *Queen* v. *Nobin Dome*, W. R., 1864, Cr., 35.

The Penal Code makes no distinction between written and spoken defamation. *Queen* v. *Mohunt Parsoram Dass*, 2 W. R., Cr., 36.

A person using defamatory expressions for the protection of his son's interests is not privileged unless the imputation is made in good faith, *i. e.*, with due care and attention. *Queen* v. *Parsoram Dass*, 3 W. R., Cr., 45.

Act XVIII of 1862 refers only to the High Court in its Original Criminal Jurisdiction, and is not applicable to Mofussil Courts. Section 27 of that Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of Exception 9, Section 499 of the Penal Code, he must show that he has exercised due care and caution. *Sealy* v. *Ramnarain Bose*, 4 W. R., Cr., 22.

In a case of defamation, proof of despatch by post to a certain district of the paper containing the defamatory matter, is tantamount to proof of publication thereof in that district. *Queen* v. *Kally Doss Mitter*, 5 W. R., Cr., 44.

and whom he knows, or has reason to believe, to be, the wife of any other man, from that man or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished as by schedule on page 608.

CHAPTER XXI.

OF DEFAMATION.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing, or having reason to believe, that such imputation will harm, the reputation of such person is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company, or an association, or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a*.) A says—"Z is an honest man; he never stole B's watch," intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the Exceptions.

(*b*.) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

(*c*.) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct, and no further.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above Section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, Civil or Criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(*a.*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this Exception if he says this in good faith; inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b.*) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity." A is not within this Exception, inasmuch as the opinion wh ch he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears on such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly, or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a.*) A person who publishes a book submits that book to the judgment of the public.

(*b.*) A person who makes a speech in public submits that speech to the judgment of the public.

(*c.*) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(*d.*) A says of a book published by Z—"Z's book is foolish; Z must be a weak man; Z's book is indecent; Z must be a man of impure mind." A is within this Exception: he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(*e.*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine, A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this Exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if

CHAPTER XXI.—OF DEFAMATION.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for two years, or fine, or both.	Court of Session, or Magistrate of the first class.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for two years, or fine, or both	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Ditto ...	Ditto ...	Not bailable.	Imprisonment of either description for two years, or fine, or both	Magistrate of the first or second class.
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	Ditto	Ditto.

A in good faith complains of the conduct of Z, a child, to Z's father; A is within this Exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations.

(*a.*) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the Exception, if he has made this imputation on Z in good faith, for the protection of his own interests.

(*b.*) A, a magistrate, in making a report to his superior officer, casts an imputation upon the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the Exception.

Tenth Exception.—It is not defamation to convey a caution in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished as by schedule on page 608.

501. Whoever prints or engraves any matter, knowing, or having good reason to believe, that such matter is defamatory of any person, shall be punished as by schedule on page 608.

502. Whoever sells, or offers for sale, any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished as by schedule on opposite page.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this Section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending, or knowing it to be likely, that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished as by schedule on opposite page.

505. Whoever circulates or publishes any statement, rumour, or report, which he knows to be false, with intent to cause any officer, soldier, or sailor in the Army or Navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State, or against the public tranquillity, shall be punished as by schedule on opposite page.

506. Whoever commits the offence of criminal intimidation shall be punished as by schedule on opposite page; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punish-

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.—*(Continued.)*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If threat be to cause death or grievous hurt, &c.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for seven years, or fine, or both.	Court of Session, or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for two years, in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.

510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for twenty-four hours, or fine of ten rupees, or both.	Any Magistrate.
	CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.					
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term, and of the description, provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.
	OFFENCES AGAINST OTHER LAWS.					
	If punishable with death, transportation, or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable.	.....	According to the provisions of Section eight of this Code.
	If punishable with imprisonment for three years and upwards, but less than seven.	Ditto ...	Ditto ...	Ditto ...	.....	
	If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	.....	
	If punishable with fine only.	Ditto ...	Ditto ...	Ditto ...	.....	

able with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished as by schedule on page 614.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished as by schedule on page 614.

508. Whoever voluntarily causes, or attempts to cause, any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing, or attempting to induce, that person to believe that he, or any person in whom he is interested, will become, or will be rendered by some act of the offender, an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished as by schedule on page 614.

Illustrations.

(*a.*) A sits Dhurna at Z's door, with the intention of causing it to be believed that by so sitting he renders Z an object of Divine displeasure. A has committed the offence defined in this Section.

(*b*) A threatens Z that unless Z performs a certain act, A will kill one of A's own children, under such circumstances, that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this Section.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished as by schedule on page 614.

510. Whoever in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished as by schedule on page 615.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished as by schedule on page 615.

Illustrations.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this Section.

(*b.*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this Section (*a*).

(*a.*) In order to constitute the offence of attempt to murder under Section 307 of the Indian Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events.

Aliter under Section 511 taken in connection with Sections 299 and 300.

Therefore, where the prisoner presented an uncapped gun at F. G. (believing the gun to be capped), with the intention of murdering him, but was prevented from pulling the trigger: *Held* that he could not be convicted of an attempt to murder upon a charge framed under Section 307 of the Indian Penal Code, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under Section 511, in connection with Sections 299 and 300.—*Francis Cassidy*, Bom. Rep., IV., 17.